

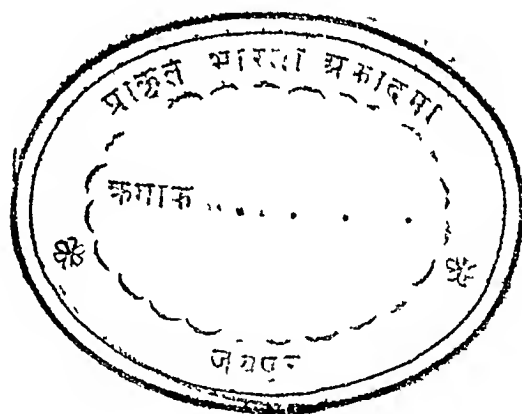
INTRODUCTION TO INDIAN ADMINISTRATION

By

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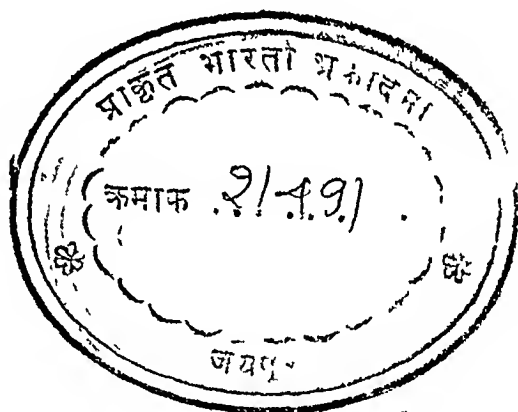
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PREFACE TO THE THIRD EDITION

Few major changes have been made in this edition. In certain places the matter has been re-arranged and re-written and an attempt has been made to bring the information as up-to-date as possible. An account of the recent expansion of the Governor-General's Executive Council has been included and reference has also been made to the Cripps offer

Bombay, June 1944

M. R. P



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PART I

INTRODUCTORY

I

INTRODUCTORY

1. The East India Company and the Conquest of India

ADMINISTRATION FOLLOWED CONQUEST British administration in India began with the British conquest of India. When the British people started acquiring territory in this country, they had also to make arrangements for its preservation and governance. An administrative system under British initiative and control has thus developed in India during the last 170 years. It is a comparatively recent episode in the pages of Indian history.

ESTABLISHMENT OF THE COMPANY It must be remembered that the King and Parliament of England had not deliberately planned the invasion of Hindustan and sent out military and naval expeditions for that purpose. Curiously enough, the Indian empire was acquired for Britain by a body which was intended to be merely a commercial concern, and which had at its inception no military ambitions or aptitude whatever.

During the sixteenth century, European nations like Portugal, Spain, Holland and France had opened up trade with the East and found it to be very lucrative.

However, the long journey across the seas to the Asiatic continent was full of grave peril. England was rather late in entering this field of commercial adventure, but a number of enterprising capitalists and merchants formed the East India Company in 1600, and Queen Elizabeth, by a special charter, conferred upon this body the monopoly of trade in eastern waters.

ITS TRADE AND 'FACTORIES' IN INDIA In the course of their trading voyages the Company's ships reached the shores of India, which was then reputed for its great wealth and splendour. English merchants soon established business relations with the Indian commercial communities, and set up a flourishing export and import trade with European countries. Their 'factories' or business centres came into existence in different parts of India. During the seventeenth century, the mighty Mogul emperors were ruling over Hindustan in the fullness of their authority and glory. The East India Company was often able to secure valuable concessions and privileges from these monarchs. The civic protection of the Mogul state extended to this foreign corporation as it did to all other citizens. The business of the Company was of an entirely peaceful nature, and many of its officers made personal contacts with eminent noblemen, princes, and even the emperors.

THE COMPANY ACQUIRES INDIA After the death of Aurangzeb in 1707 the Mogul empire fell into decay, and with the weakening of its sovereign authority there arose a general scramble for power and supremacy throughout the country. In this state of political confusion, the East India Company was involved in the vortex of Indian politics. It began to enlist armies, fight wars and conquer territory. During the course of a century, from the battle of Plassey in 1757 to the suppression of the Indian Revolt in 1858, the whole of India came into the possession of the East India Company.

PARLIAMENTARY LEGISLATION However, the Company, itself was not a sovereign body. Legally, the territory which it acquired was acquired for the British Government. The Company was a private shareholders'

concern, and its very existence depended upon the will of the Crown and Parliament of Britain. The primary object of its creation was trade, and its constitution and equipment were appropriate for that purpose. But when it began to undertake the responsibilities of governance, Parliament thought it necessary to intervene. During the century of conquest it passed many Acts to prescribe and regulate the manner in which the conquered territory should be administered.

2. Parliamentary Acts, 1774-1858, and Double Government

REGULATING ACT The earliest of these measures was the famous Regulating Act which was passed in 1774. It took the first steps in setting up a unified system of administration for the whole of India. The Governor of Bengal, in addition to his own duties as the head of a presidency, was appointed Governor-General of all the Indian dominions of the Company. He was given power to superintend, direct and control the Governments of Bombay, and Madras and of any other provinces that might subsequently be formed. An Executive Council was created to assist him in the performance of his duties. The Governor-General-in-Council was empowered to make regulations or laws for all the territories of the Company. A Supreme Court of Judicature, independent of the executive, was established at Calcutta. In spite of its many defects and inadequacies, the Regulating Act can be said to have provided the main skeleton of the present Indian Government.

PITT'S INDIA ACT. Ten years later came Pitt's India Act. Events during this interval convinced Parliament that a much stricter and much more continuous supervision over the Company's management of Indian affairs was absolutely essential. It therefore created a Board of Control in 1784. It was to be a regular department of state and had to function from day to day. The Board was invested with full powers of superintendence, direction and control over the Indian Government, and its position of superiority was clearly enunciated. In course

of time, the Board diminished into one man only, namely its President, and he enjoyed the status and responsibility of a Cabinet Minister. The executive authority of Parliament's representative was thus imposed upon the officials of the Company. This inaugurated the system of what is described by constitutional writers as Double Government. Indian affairs came to be entrusted jointly to the East India Company and to the agent of Parliament.

ACT OF 1813 The monopoly of Eastern trade, granted as a special favour and encouragement to the East India Company in 1600, soon became a target of severe criticism in England. In the circumstances of the nineteenth century it was condemned as an offensive and intolerable anachronism. The Act of 1813 therefore deprived the Company of its trading monopoly to a very great extent.

ACT OF 1833 The Act of 1833 not only abolished the trading monopoly altogether but directed that all the commercial activities of the Company should be stopped completely. Henceforward, that body became a purely political corporation charged with the duty of governing the Indian continent. The Act introduced a highly centralized system of administration. It deprived the provinces of their law-making power, and added a separate Law Member to the Executive Council of the Governor-General.

ACT OF 1858 After the East India Company had begun to play the role of an empire-builder, many Englishmen had come to feel that it was not really competent to fulfil the duties and obligations of an imperial authority. A mere trading corporation was considered to be inherently inadequate for the complex requirements of politics. The Indian Revolt of 1857 precipitated the final crisis. It was decided after that event that the Company's mission had been finished and that it must be dissolved. That was done by the Act of 1858. The Government of India was then directly taken over by the Crown and Parliament of Britain and the system of Double Government came to an end. The office of an

additional Secretary of State was created, and this new Cabinet Minister was entrusted with the charge of Indian affairs. He thus took the place of the President of the Board of Control, which had been abolished along with the East India Company.

3 The Policy of Association, 1861-1919

GROWING POLITICAL CONSCIOUSNESS After the failure of the Indian Revolt and the assumption of direct authority over India by the Crown and Parliament of Britain, circumstances naturally changed. The Indian people began to be gradually reconciled to their position of subjection and dependence. The conquerors also desired to create an atmosphere of peace and confidence in the country. The impact of western civilization on the Indian mind was producing a new self-consciousness and awakening among the educated classes. In fact, a general intellectual unrest began to manifest itself in various ways. The formation of the Indian National Congress in 1885 was an attempt to give an organized expression to this national renaissance and revival.

BEGINNING OF A NEW POLICY None of the Acts passed by Parliament prior to the year 1861 made any mention of the political rights or status of the Indian people. The millions who were to be governed were ignored in the scheme of the Indian constitutional structure. After 1861, Parliament thought it desirable to take cognizance of the fact that the Indian citizen was getting politically alive and that he was demanding his rightful place in the government of his country. A beginning was therefore made in bringing him a little closer to the administrative machine, and in giving him an opportunity of influencing the official attitude to a small extent.

ITS MAIN FEATURES The policy of association did not involve the transfer of political power into the hands of Indians. It had nothing to do with the introduction of responsible and democratic government. What was intended was that some kind of contact should be established between the rulers and their subjects. It was obviously necessary that even an irresponsible

bureaucracy should have adequate means for ascertaining the trend of popular opinion. The public also required a channel for the lawful expression of discontent against the actions of Government. Both these objectives were achieved by the formation of Legislative Councils which contained a small number of non-official Indians. At a later stage, a few high offices were also bestowed on them. Some of the simpler aspects of Indian administration were thus brought within the purview of Indian opinion.

ACTS OF 1861, 1892 AND 1909. It may be said that three important Acts were passed by Parliament in pursuance of the policy of association. The Act of 1861 introduced legislatures of the new type, with a small nominated non-official element in them. Their powers were of course very limited. The Act of 1892 slightly increased the scope of their activities and allowed the principle of election in an indirect manner. The Morley-Minto Reforms, embodied in the Act of 1909, carried the policy still further. The number of elected members was increased, though in the Central Legislative Council an official majority was deliberately maintained. A small addition was made to the powers of the Councils, though they still remained merely deliberative bodies.

CRITICISM OF THE POLICY OF ASSOCIATION. The policy of association could not satisfy the political aspirations of India. The legislatures that it created appeared ridiculous in their parliamentary garb, because they had neither the representative character nor the effective powers which are possessed by elective chambers in a parliamentary democracy. Their privileges amounted to little more than an opportunity to indulge in inconsequential criticism of some measures adopted by the Government. Even this privilege could not be successfully utilized because the bureaucratic Government was always able to command, either by executive direction or by its enormous influence, a clear majority of votes in the Legislative Councils. There was an air of unreality about their proceedings, and even sober-minded politicians confessed to

a sense of overwhelming futility in working such a poor sham for popular democracy.

4. The Montagu-Chelmsford Reforms and the Beginnings of Responsible Government, 1919-37

THE GREAT WAR Within five years of the passing of the Act of 1909, the world was severely shaken by a terrible calamity. The Great War broke out in 1914, and almost all important countries were soon involved in the struggle. As a member of the British Empire, India was called upon to fight on the side of the Allies, and its response was both quick and generous. All the resources of the nation in men, material and money were unhesitatingly placed at the disposal of the British Government.

The Great War was described by the Allies as a sort of holy crusade for the preservation of the principles of liberty, justice and democracy. They claimed that they were fighting for the cause of human civilization and freedom, and invited India to join in defence of the independence of smaller nations. Yet, by a painful irony, India's own status was that of a dependancy held in the powerful grip of a foreign nation. The right of self-government was denied to its citizens. The country which was called upon to dedicate men and money for the emancipation of mankind was itself compelled to live in political and economic bondage. Such an anomaly required immediate attention and remedy.

AGITATION FOR HOME RULE A vigorous agitation was naturally started in India for the assertion of her legitimate claims to internal freedom, or Home Rule. England could no longer refuse to entertain them. To do so would have been inconsistent with her altruistic professions. Nor could the substantial war services of India be lightly ignored. The Indian public had been long insisting that the final goal of British policy in India should be clearly defined. But it required the shock of a devastating war to induce the British Parliament to comply with this demand. On 20 August 1917,

the Secretary of State for India made a momentous declaration on behalf of the British Government.

MR MONTAGU'S ANNOUNCEMENT The following important extracts will explain the nature of the ideal as contemplated in the announcement 'The policy of His Majesty's Government is that of the increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realization of responsible government in India as an integral part of the British Empire The progress in this policy can only be achieved by successive stages The British Government and the Government of India must be the judges of the time and the measure of each advance'

ITS IMPORTANCE To the Indian mind this parliamentary definition of India's political destiny appeared to be disfigured by many conditional and restrictive clauses However, in spite of these defects, the announcement was a landmark in the history of the British administration in India It signified a new constitutional era For generations together, the Englishman had sought to provide an effective, even a paternal, government for the Indian people But he had not acquiesced in the concept of government by the Indian people Now for the first time it was decided that the Indian was to be allowed to wield political power in his own right He was to be given an opportunity to taste the pleasures and responsibilities of parliamentary practice The formation of responsible ministries was no longer ruled out as an impracticable ambition

THE SECRETARY OF STATE VISITS INDIA Another important decision was also announced at this time The Secretary of State for India was asked to pay a special visit to India and to make personal inquiries concerning its constitutional future Accordingly, Mr Montagu arrived in India in the winter of 1917 and in company with the Viceroy, Lord Chelmsford, visited important cities to collect evidence The tangible result of the collaboration of these two authorities was

the famous Montagu-Chelmsford (or Montford) Report. It contained a brief historical survey of the Indian administrative system and the authors' proposals for its reform in the light of the parliamentary announcement about India's political goal.

THE ACT OF 1919. The publication of this historic Report was followed by the drafting of a Bill on the lines suggested in it. A Joint Parliamentary Committee was appointed to discuss its clauses in detail. With the alterations made by the Committee, the Bill was again placed before Parliament and was finally passed as an Act in 1919. The new scheme actually began working in the beginning of 1921.

A TRANSITIONAL MEASURE. This Act was an attempt to implement the promise contained in the declaration of 20 August 1917. It was essentially a measure which created, and served the needs of, a transitional period. The purely bureaucratic system was to be modified but not to be wholly abolished. The principle of political responsibility was to be definitely introduced, but the extent and the scope of its action were to be limited. The Montford reforms were the first instalment of self-government. The changes brought about by them inevitably resulted in the formation of a hybrid structure. An irresponsible executive was partially placed at the mercy of a popular legislature. Bureaucracy and democracy were strangely mixed up and closely associated with each other. It was an unnatural juxtaposition of contraries which was bound to produce friction and conflict.

CENTRAL AND PROVINCIAL SUBJECTS. There were three main concepts on which the new scheme was based. First, the central and provincial spheres were demarcated and distinguished from each other with greater clarity and precision. This was not done directly by any clause of the Act but by the Devolution Rules made under it. A larger measure of independence was granted to the provinces. The list of central subjects contained items which required uniformity of policy and control throughout India. The list of provincial subjects contained

items in which freedom and initiative could with advantage be left to local authorities. The concurrent jurisdiction of the Central Government was however retained in those subjects, and therefore the provincial sphere was not exclusive or independent.

DYARCHY IN THE PROVINCES Secondly, the province was considered to be the most suitable unit for beginning the experiment of self-government. The provincial subjects were divided into two groups. The Reserved half was to be administered by an irremovable Executive Council as before. But the Transferred half was given for management to a new class of officials called Ministers. They were selected by the Governor from among the elected members of the provincial Legislative Council and were made fully responsible to that chamber for their actions and policy. The Legislative Councils themselves were greatly enlarged in size and were provided with a substantial majority of elected members. The franchise for their election was considerably lowered. A part of the provincial budget was placed under their control.

THE CENTRAL LEGISLATURE IMPROVED Thirdly, an attempt was made to give a more effective voice to the public in the conduct of the Central Government, though no element of responsibility was introduced in this sphere. The number of Indians in the Executive Council was increased to three. The central legislature was also constituted on a more democratic basis. It was given the bicameral shape. The upper house was indeed extremely oligarchical in character and retrograde in its outlook. But the lower house was expected to be more representative of Indian political talent. A wider franchise was prescribed for its election. A part of the central budget was made subject to its vote—an important innovation. The Legislative Assembly was given many opportunities to expose and criticize the attitude of the central executive.

5. Events leading to the Act of 1935

THE REFORMS DENOUNCED The Montford Reforms were denounced by nationalist opinion in India as being

inadequate, unsatisfactory and disappointing. Even the first Legislative Assembly, which was composed entirely of Moderates and Liberals,¹ passed a resolution as early as September 1921 demanding an immediate revision of the new constitution. Three years later, the Assembly led by the Swaraj Party passed an important resolution urging the Government to convene a Round Table Conference of Indians and Englishmen to formulate a scheme of responsible government for India.

THE MUDDIMAN COMMITTEE The Government then appointed a committee under the presidency of Sir Alexander Muddiman to inquire into the working of the Montford Reforms. Its report was not unanimous. The minority was composed of influential Indians who had actually worked the reforms and could therefore speak from personal experience about them. In a valuable minute of dissent they pointed out the defects inherent in the mechanism of dyarchy and unequivocally condemned the whole scheme. On the other hand, the majority, which included Government officials, made certain minor suggestions for improving the working of the system. The Government tabled a resolution in the Assembly for the consideration of these suggestions, but an opposition amendment, reiterating the necessity of holding a Round Table Conference, was carried against the Government.

THE SIMON COMMISSION AND ITS BOYCOTT The Act of 1919 had provided for the appointment of a Statutory Commission at the end of ten years after it was passed. The Commission was intended to make inquiries into the system of government, the growth of education, and the growth of responsible institutions in India, and to recommend an extension, modification, or restriction of responsible government. Ordinarily, it would have been appointed round about the year 1930. But, in response to the Indian agitation, His Majesty's Government decided to anticipate that date. In November 1927 they made the announcement that a Statutory Commission

¹ The Indian National Congress had boycotted the elections.

under the presidency of Sir John Simon would be immediately sent out to India. Unfortunately, not a single Indian was included in the personnel of a Commission which was specially asked to investigate into and to sit in judgement upon the political aptitudes, achievements and aspirations of India. This exclusion was humiliating to Indian self-respect and was keenly resented. The Simon Commission was boycotted even by the Indian Liberals. Its Report, which was published in 1930, was received with a chorus of condemnation.

THE CIVIL DISOBEDIENCE MOVEMENT In the meantime, there was a change of government in England. The Labour Party, which had frequently professed sympathy with Indian ambitions, was established in office if not in power. The new Ministry soon decided that a Round Table Conference should be convened to discuss the constitutional future of India, and Indian leaders were invited to participate in its deliberations. However, this decision did not convey the clear assurance that the ultimate object of Parliament was to confer Dominion Status on India. Indians were ardently looking forward to a declaration of this kind, and its omission from the announcement about the Round Table Conference was construed as an insult to the nation. The Indian National Congress declined to take part in the proceedings of the Conference and launched the Civil Disobedience movement in right earnest. Thousands of Indians, both men and women, intentionally broke certain laws and thus courted arrest and imprisonment. The country at last came to be governed by a series of ordinances.

THE GANDHI-IRWIN PACT AND SECOND R T C The first Round Table Conference was opened in London by King George V in the second week of November 1930. Its deliberations lasted for ten weeks. After it had dispersed, a vigorous effort was made in India to bring about a reconciliation and truce between the Government and the Indian National Congress. Lord Irwin, the Viceroy, held prolonged conversations with Mahatma Gandhi, and a settlement satisfactory to both parties was

ultimately arrived at Mahatma Gandhi later on proceeded to England to attend the second Round Table Conference which was convened towards the end of 1931. But, during this interval, the Labour Party was disrupted and had gone out of office, and a National Government, which was predominantly Conservative in character and was not particularly enthusiastic about accelerating India's political advance, was established in England. There was also another very disquieting factor. The differences between Hindus and Muslims appeared to be quite irreconcilable. The second Round Table Conference therefore ended inconclusively. The communal question was referred to the arbitration of the Prime Minister.

THE COMMUNAL AWARD AND THE POONA PACT After the return of Mahatma Gandhi from England at the beginning of 1932, the Civil Disobedience movement was revived, and the leader and a number of others were sent to jail. The Prime Minister's award on the communal question was published a few months later, and the world was staggered by the announcement that Mahatma Gandhi had decided to fast unto death as a protest against some of the clauses of the award which referred to what are described as the Scheduled Castes (or Harijans) of the Hindu community. Hurried conversations and negotiations were held behind prison bars, and ultimately an agreement was reached. It was embodied in what has been since known as the Poona Pact. The Communal Award was modified accordingly and the historic fast came to a happy end.

THE ACT OF 1935 Late in 1932, the third Round Table Conference was convened in London and it formulated its recommendations before dispersing at the end of 1932. They were considered by His Majesty's Government, and in March 1933 the latter published a White Paper containing their own proposals. These were considered by a Joint Committee of both the Houses of Parliament in consultation with a few Indians nominated by the Government. After the publication of that Committee's report a Bill was introduced in Parliament and

it was finally passed as an Act in August 1935. The new constitution, as embodied in the Act, was partially inaugurated on 1 April 1937.

6. The Two Branches of Indian Administration

NECESSARY DUALISM Unlike most of the pre-British conquerors of India, the British people did not abandon their own country and permanently settle in the land of their conquest. The Mussalman invaders of India, for instance, made India their home even though they originally belonged to Central Asia. To the British people, on the other hand, Great Britain is the vital centre of all imperial activity, that little island is the point of convergence of a vast empire. The British rule over India from Britain, and the Indian administrative structure has therefore to be based on two distinct entities. One is the country which is governed and the other is the nation which governs it. The two stand apart from each other. The distance between them is not only political and racial but it is also geographical.

TWO KINDS OF AUTHORITY The ultimate authority is naturally exercised by the sovereign people from their island home. They appoint an agent in England, called the Secretary of State for India, to function on their behalf and to keep in the closest touch with them. In this agent are vested the supreme powers of supervision over the Indian officials. He reflects the opinions and moods of the British demos. On the other hand, the work of actually governing the conquered territory is entrusted to a body of officers who have to work and live in India itself. They are the men on the spot who are in direct contact with the subject population.

TWO BRANCHES OF ADMINISTRATION The Indian administrative machine is therefore divided into two branches. One operates in India, and is of course much the bigger in bulk and extent. It is composed of the Government of India and the Provincial Governments. The other operates in England and serves as the instrument for enforcing the will of the sovereign. It consists

of the Secretary of State, his Advisers, and their establishment known as the India Office. In the interests of clarity, it is best to make an independent study of each branch and also of their mutual relations, and this method is adopted in the following pages

PART II

INDIAN ADMINISTRATION IN ENGLAND

OR

THE 'HOME' GOVERNMENT

II

THE SECRETARY OF STATE FOR INDIA

1. Qualifications and Appointment

CREATION OF THE OFFICE The East India Company was abolished in 1858. Control over Indian administration was vested thereafter in the Crown and Parliament of Britain. For the adequate and efficient fulfilment of those responsibilities, a new post of a principal Secretary of State was created. To him were transferred all the duties and functions that were formerly performed by the Court of Directors and the Board of Control. Like all British Ministers, the Secretary of State for India is a representative and a servant of Parliament. Through him are exercised the sovereign powers of that supreme body.

HE MUST BE A MEMBER OF PARLIAMENT The Secretary of State must be a member of Parliament, sitting either in the House of Commons or in the House of Lords. On very rare occasions it may happen that he is nominated to office when he is not a member of either House. But it is distinctly laid down that within six months of such a nomination he must find a seat for himself in the legislature. This may be done in two ways. A

sympathetic and obliging friend may purposely resign his own seat in the House of Commons and the Secretary of State may then successfully contest that vacancy Or he may be created a peer and elevated to the House of Lords

HE IS ALSO IN THE CABINET. The Secretary of State is not only a member of Parliament but is also given a place in its inner council, which is known as the Cabinet Membership of the Cabinet is an exalted political status Its attainment necessarily implies the possession of several outstanding qualities All governmental powers in the British democracy are concentrated in the Cabinet It is an assembly of some of the most eminent, intelligent and popular political leaders in the country They belong to the same party and are bound to each other by an affinity of opinions and principles The Cabinet can aptly be described as the *primum mobile* of the British constitutional machine

HIS QUALIFICATIONS The fact that the Secretary of State for India is one of the foremost constituents of the British Cabinet is therefore significant It automatically prescribes the qualities which the holder of that post is expected to possess He should have considerable reputation and influence in the public life of Britain He should be closely associated with a political party and prominent in its counsels and leadership It is not necessary that he should have acquired first-hand knowledge of India and its problems He is not supposed to have made a personal study of the history and geography of India or of its political and economic conditions before he assumes office His general intellectual training and the assistance of experienced permanent officials are expected to give him a proper perspective in the performance of his duties

HIS APPOINTMENT. The distribution of portfolios among members of the Cabinet is effected principally on the initiative of the leader of the party in power It is usually done in consultation with the important party luminaries The maximum of efficiency is aimed at in selecting different individuals for different tasks The

choice of the Secretary of State for India can be said to be made chiefly by the Prime Minister, after an exchange of views with his prominent associates

2. The Responsibility to the Cabinet

PREVIOUS CONSULTATION WITH COLLEAGUES. Like all Ministers in the Cabinet, the Secretary of State is responsible, in the first instance, to his immediate colleagues. He must keep them adequately informed of all new lines of action that he may propose to adopt in his department. The wider aspects of his policy must be fully explained to them and discussed with them. Their assent and support are required for all important innovations. No decision can be announced as the decision of His Majesty's Government unless agreement has been previously reached about it among the majority of the Cabinet. Then only does it become the collective responsibility of the whole unit.

DIFFERENCES WITHIN THE CABINET The Cabinet exists and functions as an indivisible entity. Its members usually profess the same political faith and owe allegiance to the same political party. They are heirs to a common legacy of traditions and philosophy. Disagreement between them would therefore pertain rather to details and degrees than to fundamental principles. However, sometimes the unexpected may happen. Serious differences may arise between the Prime Minister and any one of his colleagues or between one Minister and the rest of the Cabinet. In 1923, for instance, Mr Montagu incurred the intense displeasure of his chief, Mr Lloyd George. As recently as 1935, the repudiation by the Cabinet of the Hoare-Laval Pact was equivalent to a condemnation of the Foreign Secretary, Sir Samuel Hoare.

THEIR CONSEQUENCES In such exceptional cases, the only honourable course for a dissenting member is to resign his office. He must obviously part company with political comrades when he has ceased to believe in their politics. Both Mr Montagu and Sir Samuel Hoare, in the examples quoted above, tendered resignations of

their ministerial office as soon as a grave divergence was discovered between them and their colleagues. For the same reason Mr Anthony Eden resigned the post of Foreign Secretary in 1938. The Prime Minister and other members of the Cabinet can compel an intractable companion to make his immediate exit from the official fold. No violently discordant element can be tolerated in the innermost council of the State.

3 Responsibility to Parliament

SUBORDINATION TO PARLIAMENT As has been stated before, the relations of the Secretary of State with Parliament are those of servant with master. He is essentially the interpreter of the parliamentary will and the instrument of its authority. His obedience to that body is absolute and complete. He continues to be in office only so long as Parliament desires that he should be. Even a faint indication of Parliament's disapproval of his conduct is sufficient to precipitate his downfall. Any member of that chamber can put questions to him. He must supply all information and give satisfactory explanations. His actions can be subjected to the most searching criticism. In the last resort, he is liable to dismissal by a vote of the legislature.

TENURE OF OFFICE In accordance with British parliamentary practice, the Secretary of State for India, as a member of the Cabinet, comes into office with his party and goes out with it. The Cabinet works on the principle of joint responsibility. It remains in power only so long as it enjoys the confidence of Parliament. There can be no fixity of tenure under such a system. The life of Parliament is prescribed to be five years, unless it is dissolved earlier. So the maximum period of office that the Secretary of State can enjoy at a stretch is five years. In actual practice it is found to be much less because it is determined by the exigencies of British politics.

4. The Under-Secretaries and the India Office

TWO ASSISTANTS TO THE SECRETARY OF STATE The Secretary of State for India, like other Cabinet Ministers,

is helped in his work by two assistants who are known as Under-Secretaries. They are highly placed officials, but their constitutional position and equipment differ fundamentally. One fills a political, the other a bureaucratic role. The purposes they serve are not identical but complementary.

THE PARLIAMENTARY UNDER-SECRETARY. In qualifications and status, the Parliamentary Under-Secretary is a miniature of his master and chief. The Parliamentary Under-Secretary must be a member of Parliament. Whenever possible, he is selected from that House of which the Secretary of State is not a member. He has to expound the policy and actions of the Government on the floor of the Legislature and to do all such work as may be assigned to him by the Secretary of State. He forms part of the Ministry, though not of the Cabinet, and has to accept or to relinquish office according as his party decides and directs. In fact, the Parliamentary Under-Secretaryship is often held by able and ambitious juniors. It frequently serves as a stepping-stone to higher office.

THE PERMANENT UNDER-SECRETARY. The Permanent Under-Secretary belongs to a different category. He is not a politician and is debarred from being a member of Parliament. He is an official of the Civil Service and is guaranteed fixity of tenure during good behaviour. At the end of a long and distinguished service in his department, he is selected to be its executive head. He controls all the secretariat staff and looks to the safety and orderly arrangement of the papers and documents in his charge. The happenings in his administrative sphere are intimately known to him. His information about India must be comprehensive, up-to-date, and readily available.

HIS USEFULNESS. The Secretary of State is an intelligent but an ignorant stranger to his department. He is an ever-changing factor in the governmental picture. His period of office is precarious. Under such circumstances, the continuity and the length of service of the Permanent Under-Secretary are of inestimable advantage.

He becomes an encyclopaedia of expert knowledge which the political superior can consult with profit. He supplies the raw material on which decisions and policies can be based. The fixed and the fluctuating elements are thus happily combined in the structure of the administrative system.

THE INDIA OFFICE For carrying on work of a purely routine and administrative nature, the Secretary of State is required to have a large official establishment, which is known as the India Office. It comprises clerks, typists, superintendents, accountants, etc., serving in different grades and situations. The total number comes to about 300, and all of them are recruited in Britain. Those who are appointed to posts in the higher grades are selected as a result of the Civil Service Examination. The most successful of these civil servants can aspire to rise to the position of the Deputy Permanent, and eventually of the Permanent, Under-Secretary of State. Promotion to these high offices comes by seniority and merit. It is this secretarial establishment which keeps the executive machinery constantly and efficiently moving, and maintains the continuity of departmental action.

5. Salary and Expenses

THE NATURAL POSITION The salaries and the office expenses of the Ministers of a country would naturally be a charge on its people. Those who receive services are expected to pay for them. Such a proposition would appear to be too self-evident to need elucidation. Yet the justice of this dictum was not accepted by the British constitutionalist in respect of the salary of the Secretary of State for India till as late as the Montford Reforms.

SALARY CHARGED ON INDIAN REVENUES At least after the abolition of the East India Company in 1858, if not before, the salary and expenses of the special Cabinet Minister who was entrusted with the supervision of the Indian Government should have automatically devolved upon the British public. However, Parliament could not resist the temptation of continuing the distinction which had been introduced at the end of the eighteenth

century Alone of all the Ministers of the Crown, the Secretary of State for India was not paid from the British Exchequer. His salary was not directly voted by the House of Commons but was charged to the revenues of India

GALLING DISCRIMINATION. This was an application of the principles of business accountancy with a vengeance. The expenses of keeping the Indian estate was to be debited to the estate itself It was argued that the British citizen should not be financially penalized for creating an agency to supervise the administration of a subject country Such a convenient profit and loss calculation was one-sided and unjust because it completely ignored the gains which accrued from the conquest In fact it was typical of the antiquated colonial doctrine which looked upon a colony or a conquered territory merely as the private property of the mother country That doctrine is now discarded as being short-sighted and incompatible with modern political and social tendencies It must be noted that the salaries of the Secretaries of State for the Dominions and Colonies were not charged to the Dominions or the Colonies but have been contributed by England Indians bitterly complained against the discrimination of which they were the victims

LESSER OPPORTUNITY FOR PARLIAMENTARY CONTROL. The charging of the Secretary of State's salary to the exchequer of the Government of India had another incidental result Parliament gets, as a matter of routine, an opportunity of criticizing and controlling departments of public service in England when it is called upon to vote expenditure for them, including the salaries of their heads That was not possible in the case of the India Office The Indian question did not automatically come up before Parliament for discussion when need arose for voting the Secretary of State's salary at the time of the budget There was no question, indeed, about the competence of Parliament to interfere in the affairs of its dependency, but the normal and routine control which follows as a corollary of the power of holding the purse-

strings could not be exercised over Indian administration because of the financial independence of the Secretary of State

MR MONTAGU'S ACTION. Mr Montagu proposed the necessary improvement in this unseemly position. By the Act of 1919, the salary of the Secretary of State for India was accepted as an obligation of the British public and provided by it. This did not mean that all the expenses of his establishment and office were also being incurred by the British people. They were a charge upon the revenues of India, but the British Treasury made an annual grant-in-aid towards them to the extent of £150,000.

CHANGE MADE BY THE ACT OF 1935. The Act of 1935 has proposed an interesting change in this arrangement. Section 280 begins by prescribing that the salary of the Secretary of State and also the expenses of his department, including the salaries and the remuneration of the staff, shall be paid out of moneys provided by Parliament. But the subsequent clause of the same section goes on to add that there shall be charged on, and paid out of, the revenues of the Indian Federation, such periodical and other sums as may represent the Secretary of State's expense for performing duties on behalf of the Federation.

THE CHANGE MAY BE ONLY NOMINAL. The change thus introduced may therefore prove to be merely theoretical and verbal. Till the inauguration of this new system India used to bear the expense of the India Office, and Parliament was pleased to make a contribution towards a part of it. Hereafter, Parliament will bear that burden but may be pleased to demand a contribution from India. There is thus a definite alteration in appearances. But what really matters to India is the net amount of money she will be called upon to pay. If in actual practice there is no substantial decrease in that burden, the only achievement of the Act of 1935 would seem to be to bring about a somersault in the constitutional position. The Government of India, who were the recipients of a grant-in-aid from the British Treasury, have been transformed

into an authority which makes a grant to the latter. But there is no assurance that the monetary commitments of India will be appreciably diminished.

6. Powers and Functions

BEFORE THE ACT OF 1935 To the Secretary of State is entrusted the duty of managing those departments of the Government of India which have to function in England. The Montagu-Chelmsford Report has described his powers as they existed when the Report was written. They were extremely comprehensive in range and included every important item. The Act of 1919 also stated that the Secretary of State may superintend, direct and control all acts, operations and concerns which relate to the government or the revenues of India. All grants of salaries, gratuities and allowances, and all other payments and charges, out of or on the revenues of India, required his sanction. This power was to be exercised subject to the other provisions of the Act and rules made thereunder.

CHANGES MADE BY THE ACT OF 1935 The Act of 1935 has introduced a new constitutional structure. The British Indian provinces have been shaped into autonomous units. At a later stage, these units and the Indian States are intended to be joined in an All-India Federation under the British Crown. The principle of political responsibility will be introduced in the Federal Government to a certain extent. Theoretically, this change is of vital importance. It demands and implies not only relaxation of control by the Secretary of State but a fundamental alteration in the status of the governments in India. They now derive their power directly from the Crown of England. It would no longer be correct to describe them as mere agents of the Secretary of State, even though he still continues to be their official superior.

AN OMISSION IN THE ACT Sections 278-84 of the Act deal with the Secretary of State, his Advisers and his Department. They contain fairly elaborate provisions concerning several points. In none of them, however,

is specifically embodied his former power of superintendence, direction and control. The omission seems to be deliberate and may have some value in pure constitutional theory. It may be in accord with the elementary principles of federal polity. A federated India with its constituent autonomous units cannot be allowed to remain subject to the daily supervision and control of the Secretary of State. It must be emancipated from the intrusions of a distant superior. The Act of 1935 may be said to have brought about this necessary reform by doing away with all reference to the powers of superintendence, direction and control with which the Secretary of State was invested by the former Acts.

EXTENT OF THE SECRETARY OF STATE'S POWERS However, the practical utility of such an academic negation may not prove to be great, because it does not derogate considerably from the powers of the Secretary of State. Sections 14 and 54 of the Act clearly lay down that whenever the Governor-General or the Governor 'is required to act in his discretion or in his individual judgement, he shall be under the general control of, and comply with such general directions, if any, as may from time to time be given to him' by the Secretary of State and the Governor-General respectively.

HIS INFLUENCE WILL STILL BE VERY GREAT A perusal of the Act will show that the number of occasions on which, and the purposes for which, these authorities are required to act in their discretion or to exercise their individual judgement is very large. No important subject whether legislative, administrative or financial, has been omitted from the application of those powers. Defence, external relations, the I.C.S., the Indian Police Service, the Federal Railway Authority, the Reserve Bank of India and the all-embracing Special Responsibilities of the Governor-General and the Governor, are all subject to the control and supervision of the Secretary of State. In theory at least, even after the Act of 1935 his views and attitude can affect the whole sphere of Indian polity, if he chooses to exercise his authority.

PRESENT POSITION It must be noted that the Federa-

tion of India has not yet been inaugurated. Till it comes into existence, the Transitional Provisions of the Act of 1935 have to apply. The constitutional changes mentioned in the foregoing paragraphs have not yet taken effect, at least so far as the relations of the Secretary of State with the Central Government are concerned. Section 314 provides that the Governor-General-in-Council and the Governor-General shall be under the general control of the Secretary of State, both in respect of matters in which he has to act in his discretion and also in other matters. He has to comply with such particular directions, if any, as may from time to time be given to him by that superior authority.

7. Relations with Advisers

UNHAMPERED AUTHORITY OF THE SECRETARY OF STATE. The Secretary of State was given the assistance of a Council, known as the India Council, by the Act of 1858, and this Council was closely associated with him in the work of Indian governance. It was essentially an advisory body and its opinion was not binding upon the Secretary of State except in respect of matters concerning finance and the Services. The Act of 1935 has abolished the India Council and substituted in its place a new body called the Secretary of State's Advisers. The latter began to function from April 1937.

The relations of the Secretary of State with his Advisers are clearly defined in the Act. He makes their appointment and determines their number within the prescribed limits. It is entirely in his discretion whether to consult or not to consult with them on any matter. He may call a meeting of all of them, or of only some of them, or may take the opinion of any one of them individually. Even when their advice is sought and given, the Secretary of State is at liberty to accept or to reject it. The views of the Advisers are binding only in regard to questions which concern the superior Services in India. The authority of the Secretary of State is thus practically unhampered in spite of the existence of the body of Advisers.

8. Relations with the Governor-General

THE SECRETARY OF STATE IS DISTINCTLY SUPERIOR The Secretary of State is the agent of the Crown and Parliament of Britain. As such he is invested with supreme authority over the Indian Government. He is answerable to Parliament for the mistakes and misdeeds that may be noticed in the operation of the department in his charge. It is his duty to adjust the tone and manner of Indian governance so as to harmonize them with the wishes and sentiments of Parliament. He is the link between the British people and the Indian bureaucracy. He stands higher than the highest official who rules over India in royal pomp and magnificence. The Governor-General-in-Council is required by law to pay due obedience to such orders as he receives from the Secretary of State.

THE LEGAL POSITION. Legally, therefore, the position is clear. In the case of a conflict between the Secretary of State and the Governor-General, there is no ambiguity on the question as to who should yield. The Secretary of State's decision is final. The Governor-General has either to accept his superior's mandate or, in the alternative, to resign his office. Theoretically, no deadlock can arise between the two authorities because they are not co-ordinate. Even such an able and aggressive Viceroy as Lord Curzon had to bow to the relentless logic of this constitutional definition. And strangely enough, his resignation was destined to be provoked by the unyielding attitude of that very ministry which, being composed of his friends and partisans, had taken the unprecedented step of sending him out as Viceroy for a second time, in recognition of his splendid services.

THE PRACTICAL POSITION. However, an enunciation of this legal relationship does not, by itself, give an adequate idea of the whole picture. It misses a very important aspect of the practical truth. It leaves unsaid what actually and emphatically exists even in the absence of law or in spite of it. Circumstances dictate their own conventions and codes which contribute substantially to

the shaping of realities They must be as fully understood as the letter of the law.

THE GOVERNOR-GENERAL IS THE MAN ON THE SPOT. It must be remembered that the Governor-General is specially sent out from England to act as the head of a vast bureaucratic government. His selection is made from the same higher strata of the intellectual and political life of England from which the Secretary of State is drawn. He is the man on the spot in India and is in direct charge of its huge administrative machine. It is he who is faced with the difficulties of its working and who has to grapple with them with tact and firmness. The responsibility of maintaining peace and order and the duty of conducting the complex operations of government in the vast Indian empire lie heavily on his shoulders.

THE SECRETARY OF STATE IS FAR AWAY. On the other hand, the Secretary of State is separated by a long distance from the actual scene of the exercise of his authority. He has no personal touch with either the Indian official or the Indian citizen. As a member of the Cabinet, his attention is likely to be as much occupied with the problems of British politics as with those of Indian administration. His constant interference with the work of Indian officers would be, in the graphic analogy of the Indian proverb, like driving sheep on the ground from the altitude of the camel's back. It would be physically impossible for the Secretary of State not to allow a certain degree of independence to the views and the actions of the Viceroy.

INTEREST OF PARLIAMENT. The intensity of his control will, of course, vary with the intensity of the interest taken in Indian affairs by members of Parliament. If the House of Commons is very keen to know the course of events in India and to influence them, the Secretary of State will have to be particularly active and vigilant. If, on the other hand, the British masters choose to remain apathetic and uninterested, their servant naturally tends not to interfere.

PERSONAL EQUATION There is also the factor of what is known as the personal equation between the Secretary of State and the Governor-General. Much depends upon the relative strength and qualities of these men. The more energetic and forceful of the two personalities will naturally carry the day. Aggressive secretaries like Lord Morley enunciated and acted upon the doctrine that the Government of India was merely the agent of the Secretary of State. On the other hand, it is easily conceivable that some brilliant and capable Viceroy has successfully dominated the Secretaries of State. If the two authorities prove to be equal in gifts and influence, a clash may sometimes occur. The Governor-General has then to give way to the Secretary of State.

DIFFERENCE ONLY OF DEGREE After all, the distance between two such very high dignitaries can only be one of degree. It is created only for ensuring that the constitutional machine does not come to a standstill as a result of insurmountable difficulties. Otherwise the Secretary of State and the Governor-General are essentially co-workers and companions, standing on the same elevated platform, but with a little variation of the levels. The status of superior and subordinate has not that significance in their mutual relations which it inevitably has in the lower official world.

DECENTRALIZATION INEVITABLE UNDER SELF-GOVERNMENT With the gradual creation of an autonomous Indian Dominion with full and unrestricted rights of self-government, the Secretary of State must inevitably cease to be invested with that administrative importance and control which he now possesses. It is even possible to contemplate that his office may be merged in that of the Secretary of State for the Dominions, whose constitutional status *vis-a-vis* the mother-country has been amplified by the Statute of Westminster.

III

THE SECRETARY OF STATE'S ADVISERS

1. Need for Advisers

IGNORANCE OF THE SECRETARY OF STATE ABOUT INDIAN AFFAIRS By the abolition of the East India Company in 1858, a long-standing connecting link between England and India was finally removed. It left a perceptible gap in administrative arrangements, particularly because of the disappearance of the Court of Directors. The newly created Secretary of State for India was not selected to hold his office because of his special knowledge of Indian affairs. More often than not, he was totally ignorant about them. He therefore required considerable assistance and guidance in the discharge of his duties.

INDIA HAD NO RIGHTS OF SELF-GOVERNMENT The need was all the greater because this conquered country, unlike the Dominions, was governed from top to bottom by a foreign bureaucracy. The people of India had not the slightest control over the Government of India. They were permitted to enjoy the civic privilege of being compelled to pay taxes and to obey laws. But there were no representative legislatures in India to voice popular feelings, to enact laws, to vote expenditure, and to direct the administrative system.

A CHECK WAS REQUIRED OVER THE BUREAUCRACY It therefore became necessary to provide some other effective check on the actions of Indian officers. Obviously, they could not be allowed to reign in unbridled authority. That would have been as detrimental to the interests of England as to those of India. Every bureaucracy must be ultimately responsible to some superior authority. Otherwise, there is great danger of its deteriorating into a pernicious tyranny. The Secretary of State was therefore called upon to superintend the details and the policies of the Indian administration to a very great extent. Every important item of

legislation, executive action, and finance was required to be submitted for his previous approval and sanction.

2. The India Council and its Abolition

THE COUNCIL OF INDIA CREATED The proper performance of such an elaborate duty imposed a heavy responsibility on the Secretary of State. That superior parliamentary official was a curious combination of power and ignorance. It was prudent to take the precaution that his final decisions were not vitiated by a lack of proper relation to realities. Hence, the Council of India was formed to advise and assist him. It was composed of persons who had to their credit long years of service in India, and had ample knowledge and experience of Indian conditions.

RESTRAINT ON THE SECRETARY OF STATE There was another incidental consideration of some importance. Just as it was hazardous to leave the Indian bureaucracy to its own uncontrolled judgement, so also was it a little undesirable to allow the Secretary of State to have unrestrained authority in an extensive administration with which he was not personally familiar. His exercise of that authority had to be prevented from developing into a mild type of political absolutism. He was, of course, responsible to Parliament. But that august body was not likely to concern itself with his daily routine. The India Council could perhaps be conceived as a limited constitutional restraint on his superior powers, without diminishing in any way his pre-eminence and prestige.

ITS UNHEALTHY COMPOSITION From the Indian point of view, the composition of the Council was extremely unhealthy. An assembly of the retired members of the Indian Services may prove to be a storehouse of valuable information. Unfortunately, it may also represent a mischievous concentration of reactionary opinions and ideas. A conservative outlook is almost an inseparable feature of the bureaucratic mind. It worsens into obstinacy and intolerance if the bureaucracy is not required to live in the salutary fear of the popular will.

Indians naturally disliked the association of the Secretary of State with such a retrograde influence. If, by chance he happened to be a man of liberal ideas, the weight of the India Council would probably be cast in the opposite direction.

ITS INCOMPATIBILITY WITH THE IDEAL OF SELF-GOVERNMENT Besides, the grant of political rights to India necessarily implies the withdrawal of British control over that country. A self-governing India and a body like the India Council, with its special powers and veto, could not really go together. It was an incongruous combination. As the status of India approximates more closely to the status of the Dominions, interference in Indian affairs by Councils and even by Secretaries of State from outside must cease. The India Council was not condemned merely because it was a worthless and costly superfluity which involved an avoidable waste of money. Its existence was fundamentally repugnant to the concept of political freedom which it is the keen aspiration of India to achieve at an early date. Indians urged that the total abolition of such an unwanted chamber was the only effective measure of its reform. Ultimately, the Council was abolished by the Act of 1935.

3. The Secretary of State's Advisers

NO COMPLETE TRANSFER OF POWER TO INDIA. However, the Act of 1935 does not contemplate the transfer of all control over India from the Englishman to the Indian. Even under its provisions many important matters are still subject to the control of the Secretary of State. The old constitutional logic therefore continues to persist unabated. It is asserted that as long as parliamentary authority is maintained over the Indian Government to any extent, the Secretary of State cannot be entirely relieved of all his administrative responsibilities. It naturally follows that he cannot be deprived altogether of the advice of experts who have a personal knowledge of Indian conditions. The India Council was dissolved

in deference to Indian wishes,¹ but a substitute was simultaneously created to perform its functions. Appointment of persons who are styled as Advisers to the Secretary of State has been prescribed by the Act of 1935 and they have actually begun functioning from April 1937.

CONSTITUTION AND STATUS OF THE ADVISERS

Appointment The Advisers are to be appointed by the Secretary of State

Number Their number is to be not less than three nor more than six as the Secretary of State may from time to time determine. A person who before the inauguration of provincial autonomy was a member of the India Council—that is before 1 April 1937—may be appointed as an Adviser to hold office for such period less than five years as the Secretary of State may think fit. During the transitional period till the actual establishment of the federation, the number of Advisers is to be not less than eight and not more than twelve as in the case of the India Council

Qualifications At least one half of the number of Advisers must be persons who have held office for at least ten years under the Crown in India. They must not have last ceased to perform in India official duties under the Crown more than two years before the date of their appointment as Advisers. In practice, they will be persons who have occupied exalted stations in the Indian hierarchy and have retired after a long period of service in varied capacities. It is also ensured that their experience should be quite recent and fresh so that the standards of judgement that they adopt do not become out of date. The Advisers are not capable of sitting or voting in either House of Parliament

Tenure The term of office of an Adviser is to be five years and he will not be eligible for reappointment. He will be at liberty to resign his office at any time, and the Secretary of State may remove him on grounds of physical or mental infirmity.

¹ Government of India Act 1935, Section 278, Clause 8

Salary Each Adviser gets a salary of £1,350 a year. If one is domiciled in India at the time of appointment, he receives an additional subsistence allowance of £600 a year. It is a welcome financial relief to Indian members. They are required to keep two homes, one in India and the other in England. Their expenses are naturally heavier than those of Englishmen living in England. Money for this expenditure on the salary and allowances of Advisers is provided by Parliament. It is no longer a burden upon Indian revenues.

Functions The Advisers have no legislative, executive or judicial functions. It is their duty to advise the Secretary of State on any matter relating to India on which he may desire their advice. The powers conferred on him with regard to the Services (Part X of the Act) are not exercisable by him except with the concurrence of his Advisers. Members of the Services in India are therefore assured of adequate protection for their special rights and privileges, because they are entrusted to the benevolent care of senior members of their own fraternity.

Status It will be in the discretion of the Secretary of State whether or not he consults with his Advisers on any matter, and if so, whether he consults with them collectively or with one or more of them individually. He also decides whether to act or not to act in accordance with any advice given to him by the Advisers. The superiority and independence of the Secretary of State are thus emphasized. Even the corporate character of the Advisers is dispensed with.

4. The Nature of their Influence

INSIGNIFICANT POWERS It will be, easily seen that there is no fundamental difference between the Advisers and the India Council which they have supplanted. The basis and purpose of the two bodies is the same. The only real power which the Advisers, like their predecessors, can be said to possess is in regard to rules and regulations about the Services. The Advisers are liable to be entirely ignored by the Secretary of State even

when momentous decisions are required to be taken by him.

THEY DESERVE TO BE ABOLISHED. Thus, though the India Council as such has disappeared, a very substantial shadow, bearing a close resemblance to the original, will persist as its successor. All the criticism that was directed against the India Council also applies to the new creation. The latter's veto in the matter of the Services is paradoxical and vexatious when political power is supposed to have been transferred to responsible Indian Ministers, and the sooner such an anachronism vanishes from the Indian constitutional picture, the better for India.

IV

THE HIGH COMMISSIONER FOR INDIA

1. Large Requirements of the Indian Government

A STRIKING FEATURE The post of the High Commissioner for India was created for the first time by the Act of 1919. There is one striking peculiarity of this important office. In the considerations which have led to its creation, politics and economics are closely woven together. The High Commissioner's duties are partly political and partly commercial. It is necessary to understand the full significance of such an interesting combination.

COMMODITIES USED BY A GOVERNMENT The Indian Government, like all governments, requires a large number of different kinds of articles in the performance of their civil and military duties. For example, the defence force of the country has to be adequately equipped with food and clothing, arms and ammunition, tanks, warships, submarines, aeroplanes, gas masks, and similar types of modern mechanical contrivances. The construction and maintenance of big projects like railways, irrigation works, telegraph and telephone systems, broadcasting stations, and hydraulic power-houses, involves the utilization of an immense quantity of many sorts of materials. Even the comparatively simpler routine of the administration of modern days can hardly be carried on without the constant use of stationery articles like pens, pencils, pins, paper, ink, erasers, typewriters, bicycles, motor cars and buses, steam rollers, electrical goods, steam engines, chemicals, medicines, printing machinery and a hundred other important things.

ENCOURAGEMENT TO NATIONAL INDUSTRY How does a Government obtain all this mass of commodities? Ordinarily, in a capitalistic community, the state itself does not directly undertake the work of industrial pro-

duction but purchases most of its requirements from private manufacturers by payment of a price. A Government with a nationalistic outlook is keen upon seeing that the needs of the nation are satisfied, in a substantial measure, by the industry of its own people. The vast expenditure on national purchases can be so organized that it becomes an effective stimulus for the starting of new industrial ventures in a country and for strengthening them. The satisfaction of a nation's wants can itself be made to constitute a vigorous impetus and encouragement to its producers. It is particularly necessary to follow this policy in the case of a backward country like India.

NEED FOR AN ENLIGHTENED POLICY India is a land endowed with an abundance of natural resources. It also possesses plenty of man-power. These two valuable assets require to be intelligently organized into a productive combination. The results of such a uniting process would be remarkable. The economic and the moral fabric of the community will be immensely strengthened if the community's services are requisitioned for the satisfaction of the community's wants. No force could be more powerful for the mobilization of a country's creative gifts and their robust consolidation than the collective will of its people.

GOVERNMENT'S INDIFFERENCE. The British bureaucracy which rules over India, and its British masters who control the Indian Government from their own island home, have not showed any eagerness to consider the subject of India's store purchases in terms of the material advancement of India. Orders for goods worth crores of rupees are being placed year after year outside the country. Bills for their value, swollen by the profits of a foreign manufacturer and of a number of foreign middlemen, are being continuously paid. No deliberate attempt has been made to turn this vast expenditure into an effective instrument for the industrial rehabilitation of the country. Nothing is more tragic in the history of modern India than this lapse on the part of its rulers.

2. The Method of Purchase

THE PROPER METHOD OF PURCHASE When a nation decides to purchase commodities from foreign countries what should be the guiding principle in making the purchases? Obviously, it must be to obtain the maximum amount of satisfaction at the minimum cost. The choice of the purchaser in such instances cannot be confined to the produce of a particular country. It ought to be determined by the advantages that may be offered in the matter of price and delivery by different dealers. There will be keen competition among manufacturers throughout the world to secure orders, and without sacrifice of quality, the purchaser will be able to accept tenders which will be the lowest practicable. Excessive expenditure will thus be avoided.

INDIAN PURCHASES MADE IN LONDON Foreign commodities required for the Indian Government are manufactured in Europe and America. It was therefore considered convenient to arrange to buy them in the biggest commercial centre of the world, namely, London. The Government naturally required an agent and a representative to act on their behalf and in accordance with their instructions in that city. To him could be sent periodic lists of requirements, and he was expected to procure the necessary articles on the most favourable terms. It would appear to be only in the fitness of things that this agent should be entirely a servant of the Indian Government, subject to their mandates and an instrument of their will.

THE SECRETARY OF STATE AS AN AGENT But the actual practice developed differently. The Secretary of State and his office are located in London. He is the head of the Indian Government and is in close and constant touch with their important activities and problems. He took over the work of purveying to the needs of his Indian subordinates. Whenever the latter desired to have particular articles, they were asked to communicate with the Secretary of State. He undertook to perform all the agency functions on their behalf,

and to make available to them the different kinds of goods for which they had indented.

AN UNDESIRABLE COMBINATION The institution of such a system was very unfortunate from the Indian point of view. The Secretary of State is the political superior of the Government of India. His actions and orders cannot be questioned by the latter, who have to carry them out loyally and ungrudgingly. The commercial agent of the Indian authorities thus turned out to be a master who dictated and not a servant who obeyed. He was not responsible to those whose money he had the opportunity to spend. On the contrary, he controlled their judgement and discretion and could direct their expenditure into particular channels. It was a highly anomalous position.

ENGLAND'S INDUSTRIAL GROWTH It must be further remembered that the British conquerors of India, unlike their predecessors, are also great captains of industry. They were the pioneers of the Industrial Revolution, and have energetically developed their industrial and commercial production. Now the prosperity and the very existence of an industry depend upon the unrestricted sale of the output. If the mass of commodities that it contributes is not quickly disposed of, the whole mechanism comes to a standstill. It is therefore of vital importance to all producing nations that they should capture markets to absorb their produce.

THE GROWTH OF ITS EMPIRE Britain was blessed by a fortunate coincidence in this respect. The development of its industry was accompanied and followed by the growth of its vast empire. Exactly when its capacity to put forth a huge quantity of manufactured articles had reached a respectable limit, it acquired immense areas which could serve as a lucrative field for commercial expansion. England's mastery over a richly endowed and thickly populated country like India was established at this very juncture. It was inconceivable in those days that the people of a conquered land could be allowed to govern themselves, and the British therefore assumed control over India's administration.

INFLUENCE OF ITS INDUSTRIAL MAGNATES. The Secretary of State is completely subordinate to the will of the British Parliament. The industrial and commercial magnates of England are strongly represented in that body and naturally influence its decisions and policy to a very great extent. Nor can their attitude be purely disinterested and impartial. As mighty producers, they will vigorously seek markets for the export of their commodities. From the industrialist's point of view, England's political domination over India would offer great potentialities for establishing stable markets which would ensure prosperity to the British manufacturer.

FINANCIAL LOSS TO INDIA The fear was often entertained that India's interests as a buyer were not safe in the hands of the Secretary of State. It was suspected that he was successfully pressed to give preference to British goods at higher cost even when the same quality was available outside Britain at lower cost. If this were so, it inflicted unnecessary monetary loss on India and imposed a drain on its wealth for the benefit of the conqueror. The position was exasperating to the Indian mind.

The authorities in India, who were all Englishmen, would not be likely to feel the injustice so keenly. But even if they did, they were powerless to prevent it. They could not question the discretion of the Secretary of State. The combination of the constitutional superior and the commercial agent was extremely awkward.

3. Appointment of the High Commissioner for India

APPOINTMENT OF THE HIGH COMMISSIONER The definition of India's political goal in August 1917 and the introduction of the Montford Reforms two years later indicated a change in the angle of vision of the Englishman. The Crewe Committee, which was appointed in 1919 to consider plans for the reorganization of the India Office, recommended a bold departure from a system which gave rise to suspicions in the Indian mind about the intentions and actions of the Secretary of State. The self-governing Dominions of the British Empire

appoint their own officers in London for the transaction of commercial and also political business. They are known as High Commissioners. And by the Act of 1919, matters were set right, at least theoretically, by India also being allowed to appoint its own High Commissioner.

HIS STATUS The High Commissioner for India and his office are stationed in London. He is selected by the Governor-General-in-Council, and his salary is paid out of Indian revenues. He is entirely a servant of the Government of India, amenable to their discipline and subject to their supervision and instruction. The tenure of his office is usually five years. The office was generally held till recently by very senior and very highly placed members of the Civil Service like Executive Councillors of the Governor-General. Now non-official Indians have been appointed to hold it.

DUTIES OF THE OFFICE The High Commissioner has to perform all those agency functions for the Government of India which were formerly performed by the Secretary of State. It is his principal duty to procure for them and for the Provincial Governments all those articles which they require to import from abroad. He is expected to invite tenders for the supply of goods from all the important producing countries and to secure the lowest competitive prices. Irrespective of political or any other kind of pressure that may be exerted on him from outside, his insistence must be exclusively on India's gain and India's benefit. The High Commissioner is also entrusted with certain minor duties like looking after the welfare of Indian students who are prosecuting their studies in England.

4. Practical Results

SOME PERTINENT QUESTIONS How far has the primary purpose of the creation of the new office been fulfilled? To what extent has the High Commissioner been able to safeguard India's national interests? Are all his purchases invariably confined, and allowed to be confined, to the cheapest markets? Or is he required to observe some kind of preferential discrimination in favour of

British and Empire products? These are inevitable questions. If they could be answered satisfactorily, the appointment of the High Commissioner could be justified and welcomed on practical as well as theoretical grounds. Unfortunately, all the statistical and other data on which alone a definite answer to all these questions can be based are not easily accessible to the public

INDIAN GOVERNMENT IS A BUREAUCRACY. It is also necessary to emphasize that the Government of India is an alien bureaucracy. It does not symbolize the Indian people. In such an undemocratic system, the rulers and the ruled are not really equated. In fact, they are likely to be in conflict with each other on major issues. The outlook of foreign rulers cannot always be identical with the hopes and ambitions of those over whom they rule. Their interests may often prove to be mutually incompatible. The British bureaucracy is naturally eager to support British industry and British trade. A High Commissioner who is entirely its servant would hardly find it feasible to disregard its inclinations. The exercise of a purely bureaucratic authority cannot possess the full connotation of popular control.

DOMINIONS ARE SELF-GOVERNING. Matters stand differently with the Dominions. There is no artificial gulf separating their Governments from their peoples. Their High Commissioners staying in London have come to acquire a unique prestige. They function not only as the commercial agents but, for all practical purposes, as the ambassadors of the Dominions in the mother country. They are stationed as the representatives of their people in the imperial capital. Consultations on imperial issues are held through them. They serve as the channel of communication between the daughter countries and the mother country. Usually, they are first-rate politicians who have been leaders of public opinion in their country and have occupied high ministerial office.

5. Changes made by the Act of 1935

AN IMPORTANT CHANGE. The Act of 1935 contains an important clause concerning the High Commissioner

for India. Section 302 provides that he shall be appointed, and his salary and conditions of service shall be prescribed, by the Governor-General exercising his individual judgement. He has to perform such functions as the Governor-General may from time to time direct. The authority of the Government of India, as represented by the Governor-General-in-Council, and as exercised at present, is thus substituted by the authority of its individual head.

ITS REACTIONARY NATURE The change is apparently insignificant, but it may prove to be very far-reaching in practice. It is typical of the process of neutralizing the grant of power by the imposition of restrictions which characterizes the scheme of the Act of 1935. The declared object of that measure is to transfer political power to the hands of Indians. 'Therefore the principle of responsible government is to be introduced even at the centre. And yet, though the bureaucratic executive councillors will be transformed into responsible Indian Ministers, the Indian Ministers' political powers are curtailed in that the Indian High Commissioner will not be nominated to hold office by them nor will he be subordinate to their mandates. At the most, Ministers may expect to be consulted before the Governor-General takes any action in the exercise of his individual judgement.

In fact, India's agent in London may not be absolutely beyond the direction and control of the Secretary of State. The Governor-General, when exercising his individual judgement, is required to act under the superintendence of that supreme Parliamentary head. The very object and purpose of creating the office of Indian High Commissioner may therefore stand in danger of being frustrated. He will be far removed, and even sheltered, from popular control, as exercised by and through an elected legislature. Nor can he acquire that imperial status and importance which the High Commissioners of the self-governing Dominions have been naturally able to achieve.

PARLIAMENT AND INDIA

1. The Legal Position

SOVEREIGNTY OF THE CROWN AND PARLIAMENT The sovereignty of the British Crown and Parliament over the Indian Empire was established by right of conquest. In strict legal theory, there are no restrictions or limitations on that sovereignty. The form of the Indian constitution is determined by Parliament. The daily routine of its operation is controlled by Parliament's representative and servant, the Secretary of State for India. Parliament can interfere as freely and frequently as it wills in the affairs of India. The political, the economic and even the cultural destiny of the country can be shaped and moulded by parliamentary command. The British democracy expresses itself through the British legislature. Therefore, the authority of the latter is considered to be absolute and complete.

CONTROL OVER EAST INDIA COMPANY Even during the lifetime of the East India Company, this constitutional position was constantly asserted. The Company owed its very existence to a royal charter. Its powers were modified and extended, from time to time, by further issues of similar royal or parliamentary charters. At a later stage, Parliament began to appoint small committees of inquiry to scrutinize the details of the Company's activities. It also passed a number of Acts to regulate the method of Indian governance. Pitt's India Act of 1784 went one step further. It set up a Board of Control over the East India Company and thus created a regular department in England for supervising the administration of India from day to day. The President of this Board soon acquired the status of a Cabinet Minister.

CONTROL OVER THE SECRETARY OF STATE The Company was abolished in 1858. Since then, the Secretary of

State has been functioning on behalf of Parliament. As has been already explained, he is entirely subordinate to the latter's direction and will. It is true that the British democracy is not much interested in the administrative problems of a distant dependency. The indifference of the average Englishman to happenings in India is only equalled by his ignorance about the Indian territory and its people. Besides, the extent to which even the parliamentary masters actually dictate to their own subordinates has to be determined by considerations of practical wisdom. All the same, the fundamental constitutional relationship is beyond any doubt or dispute. The British Parliament, which represents the British nation, can pass any legislation for India and can effectively control the whole machinery of its administration.

2. Relaxation of Parliamentary Control

THE STATUS OF THE DOMINIONS However, a definition which attributes unrestrained and absolute sovereignty to Parliament in all circumstances has no correspondence to reality. In respect of the Dominions, for instance, it is inapplicable and out of date, particularly since the enactment of the Statute of Westminster. The British Empire is described as a free association of equal partners and as a commonwealth of nations. Some of its most important constituents are fully self-governing and independent. In fact, no momentous decision affecting the Empire is taken by the British Parliament without the consent of the Dominions. It is therefore wrong to imagine that Parliament looks upon itself as an omnipotent sovereign which can claim and exact obedience from all its subjects across the seas.

INDIA NOT A DOMINION India has not yet been privileged to be in the category of the Dominions. The Indian Government is not exclusively formed by the Indian people nor is it controlled by them. A bureaucracy which is ultimately responsible to the British Crown and Parliament but not to the Indian nation is

specially recruited and commissioned to rule over India. It therefore follows that parliamentary authority in respect of Indian governance is not merely formal and nominal. It is real. Even the Act of 1919 brought about no derogation in either the Secretary of State's or Parliament's powers of control over the Government of India. It has been repeatedly emphasized by the British politician that Parliament must be the sole judge of the time and of the degree of each constitutional advance which India may be allowed to make.

PROMISE OF SELF-GOVERNMENT Yet the intentions of Parliament about the political future of India were expressed in clear language in 1917. Mr. Montagu's famous pronouncement was made with the full concurrence and on behalf of all his Cabinet colleagues. It enunciated the ideal of responsible government for India, to be realized in gradual stages. The Act of 1919 was conceived as a perceptible step towards that distant ideal. The Act of 1935 is supposed to be leading in the same direction. It claims to inaugurate full provincial autonomy and also to incorporate the dyarchical principle in the structure of the All-India federation whenever it is brought into existence.

DIMINUTION OF PARLIAMENT'S POWERS The grant of political rights and privileges to India would necessarily imply the withdrawal of parliamentary control over Indian affairs at least to the extent of that grant. If the transfer of power to Indians is to be genuine, Parliament cannot simultaneously retain that very power in its own possession. When the central and provincial Governments in India become completely subordinate to representative Indian legislatures, the superintendence of a British Minister over those Governments will have to cease. The logic of such a situation is simple and unimpeachable. If India is permitted to govern itself it cannot at the same time be governed by foreigners.

RECOMMENDATIONS IN THE MONTFORD REPORT The Montagu-Chelmsford Report contained a definite recommendation pertaining to this question. It suggested

that in respect of all matters in which responsibility is entrusted to representative bodies in India, Parliament should be prepared to forgo the exercise of its own powers. That supreme body must set certain limits to its own authority if India's political advance is not to be a mere shadow. It would mean a process of self-effacement for Parliament from the Indian scene. But it must be deliberately pursued, *pari passu* with the development of responsible institutions in India. A progressive increase in India's political freedom would have to be automatically accompanied by a corresponding relaxation in Parliamentary supervision over Indian affairs.

THE METHOD OF CONVENTIONS However, no specific provision for curtailing the authority of Parliament or of the Secretary of State was included in the Act of 1919. Such a legal restraint is felt to be inconsistent with British constitutional traditions and is therefore repugnant to the British mind. But what was not affected by the letter of the law was sought to be achieved by the establishment of conventions. It is necessary to understand the peculiarities of parliamentary conventions and the manner in which they operate.

3. The Establishment of Conventions

WHAT IS A CONVENTION ? A convention is a dignified name for a custom, practice or tradition which commands general acceptance. The term has acquired almost a technical significance in the language of political science. A convention is not a law. It is not enacted by a legislature. Its violation is not followed by a judicial penalty. Yet it can have the same force and prestige as a law. A nation, like an individual, may drift into a certain course of action and may get so accustomed to its routine, that it would make every effort to maintain what has actually become a part of its normal life. Similarly, a people may voluntarily agree to abide by a certain code of conduct, and loyally carry out the agreement. It could be entirely a self-

imposed obligation, not enforceable in law, but because of its invariable and general adoption, it becomes a vital element in social and political life.

EXAMPLE OF THE BRITISH CABINET. Some of the most important political institutions of England are not known to the English statute book. They are evolved by and embodied in very strong conventions and traditions which are too firmly rooted in the country's life to be disturbed or dislocated lightly. The Cabinet system and responsible government of the parliamentary type have been the essence of British constitutional development during the last two centuries. They are the most outstanding contribution made by the British genius to political theory and practice. Yet neither the Cabinet nor the doctrine of responsibility were formulated by legislative enactment. They are part of the unwritten law of the land.

As no statutory restrictions were deemed feasible on the Secretary of State's powers, it was supposed that he would voluntarily accept limitations on his power. Two cases were clearly distinguished in practice and definite action was recommended for each one of them after the Montagu-Chelmsford Reforms.

TRANSFERRED SUBJECTS The Transferred provincial subjects were avowedly ministerial subjects. Parliament had delegated all control over them to provincial legislatures. These latter bodies were purposely democratized and made more representative in order that they should play their role properly in the scheme of responsible government. The retention of active parliamentary control over these matters was therefore an evident incongruity. Hence, it was prescribed by a rule made under the Act of 1919 that in respect of Transferred subjects the power of the Secretary of State to superintend and control should be strictly limited to the minimum. It should be exercised mainly for the purpose of safeguarding the administration of the central subjects and for deciding matters in dispute between two provinces.

CENTRAL AND RESERVED SUBJECTS The central subjects and the Reserved provincial subjects were in a different category. Here, the ultimate responsibility, legally speaking, was supposed to lie with Parliament. No relaxation of the Secretary of State's authority was therefore possible by the compilation of rules. But the spirit of the Montagu-Chelmsford Reforms could not be ignored. The Act of 1919 was stated to be the first instalment of the gift of political autonomy to India. It was admittedly a prelude to successive similar instalments, the final stage being the attainment of Dominion status. In these circumstances, the control of the Secretary of State even in Reserved provincial and in central subjects could not remain absolute and undiminished, as it had been before.

THE CONVENTION It was therefore recommended that in these subjects also there should be some delegation of financial and administrative authority to the Government of India and to the provinces. The adoption of a definite convention was strongly recommended for that purpose. Accordingly, the following undertaking was officially given, and it has since been recognized as a necessary feature of the working of the Indian constitution. If on any matter of purely Indian interest, the executive governments in India and the Indian legislatures are in agreement, the Secretary of State and Parliament would not ordinarily interfere with the decisions arrived at in India, even if their views were opposed to that decision. Many party leaders of Britain have supported this promise.

4. The Fiscal Autonomy Convention

FISCAL QUESTIONS One particular instance of the operation of such a convention and the application of the principle of non-interference was specifically mentioned by the Joint Parliamentary Committee which reported on the Bill of 1919. The belief, it said, was widespread that India's fiscal policy was dictated from Whitehall and that it was intended to benefit Britain at the cost of India. The Committee felt that the

entertainment of such a belief was quite undesirable. It therefore suggested that liberty should be granted to the Government of India to devise the tariff policy which seemed to them to be best fitted to India's needs, taking India to be an integral part of the British Empire.

THE CONVENTION Here also, the method of relaxing parliamentary authority was to be the institution of a suitable convention and not a limitation imposed by law. It was proposed that whenever the Indian Government and the Indian legislature agreed on fiscal questions, the Secretary of State and Parliament should not ordinarily interfere.

OCCASION FOR A PRECEDENT An important precedent in conformity with this recommendation was established only two years after the introduction of the Montford Reforms. The conclusion of the Great War was followed by a big trade slump and depression throughout the world. Industry was disorganized, production had to be curtailed, and incomes dwindled. The Government of India were faced with a grave financial situation. Their annual budgets presented a series of large deficits and their credit had gone very low. Heroic efforts had to be made to restore the equilibrium between income and expenditure. Higher taxation and ruthless retrenchment were the only effective remedies for preventing an ugly deterioration in the financial stability of the country.

INCREASE IN INDIAN IMPORT DUTIES The Government of India were therefore constrained to propose a drastic increase in the rates of customs duty levied on all articles imported into the Indian ports. The proposal was sanctioned by the Indian legislature. The British industrialist, however, was greatly perturbed by the whole scheme. A high tariff was bound to be protective in its effect, at least to a certain extent, even if the intention of its levy was only to obtain revenue.

A deputation of Lancashire merchants therefore waited upon Mr Montagu, who was then the Secretary of State for India, and requested him to exercise his

superior powers of control and veto to kill the Indian scheme Mr Montagu's reply was unambiguous and emphatic. He did not enter into the merits of the question. To him it was enough that the Government of India and the Indian legislature were agreed on the tariff issue. He made it clear to the Lancashire deputation that, in the light of the recommendations of the Joint Parliamentary Committee, he was unable to interfere in the matter of the new customs schedule that was proposed by the Government of India with the full concurrence of their legislature.

This was the first test of the genuineness of Parliament's promise and the right precedent was unequivocally established. Another Secretary of State, Mr Wedgwood Benn, who was a member of the Labour Government during 1929-31, endorsed the same policy. But even such declarations could be little more than a gesture of goodwill. They were marked by certain inherent limitations.

5. Defects of the Method of Conventions

✓ **DIFFICULT CONDITIONS.** It is clear that the autonomy conferred by the method described in the foregoing pages could not have any great practical value. The convention which is intended to unlock the gates of India's fiscal freedom can only operate when certain essential conditions are fulfilled. And those conditions are difficult of fulfilment in the normal course of Indian administrative routine.

RELATIONS OF THE INDIAN GOVERNMENT WITH THEIR LEGISLATURE. Thus, at the very outset it is declared indispensable that the Government of India and the Indian legislature must be in agreement with each other. The bare statement of such a requirement is sufficient to expose the inherent improbability of its satisfaction. The Government of India is an irresponsible alien bureaucracy. It is drawn from a conquering nation and reflects the views and interests of the British masters of India. The elected Indian legislature, on the other hand, reflects the aspirations and the distress of a subject

people It serves as a vehicle for the expression of the hopes and fears, the ambitions and the restless ferment, of a conquered race.

FUNDAMENTAL DIFFERENCE Those who are in the enjoyment of power are naturally bent on extending and perpetuating it Those who are desirous of acquiring power are equally naturally keen on disputing the possession of that power by the present rulers The aim of all political agitation in India has been the attainment of swaraj. The relations between the bureaucratic executive governments in India and the elected Indian legislatures have not been, and are not likely to be, marked by cordial harmony A convention which presupposes agreement between two parties which are more likely to oppose than to agree with each other is an illusion The precedent established by Mr Montagu was really too exceptional in the circumstances of its origin to be capable of frequent repetition

OFFICIAL AND NOMINATED MEMBERS IN THE LEGISLATURE Other difficulties have also been noticed in the working of the convention The Indian legislatures as constituted by the Act of 1919 were not composed entirely of elected representatives They contained a fairly large proportion of official members whose votes were directly commanded by the Government There were also the nominated non-officials whose votes could be influenced by the official whips. The views of the legislature are evidently intended to be taken as an indication of Indian opinion in general It was therefore argued, when the question of giving preferential treatment to British textiles came up before the Legislative Assembly in 1930 for discussion, that these officials and nominated non-official members should abstain from voting whenever decisions were to be taken on controversial issues However, the Government did not accept this interpretation of the procedure for ascertaining the legislature's wishes and have mobilized all their numerical strength on the floor of the house whenever important issues were to be decided.

'PURELY INDIAN INTERESTS' NOT EASILY DEFINABLE. Further, what is exactly connoted by the expression 'purely Indian interests', when India is considered to be an integral part of the British Empire? In the highly complex life of modern times, the interdependence of even independent nations is a striking phenomenon. Any step contemplated or adopted by one nation has its repercussions on the whole world. The economic and political self-assertion of India is bound to affect other parts of the Empire and also the mother country. In such a state of things, 'purely Indian interests' may be discovered to be but an elusive phantom.

AN UNCERTAIN BASIS. The Indian public has not shown any enthusiasm for the method of conventions. They may work effectively in a free country like England, the growth of whose polity has been going on unhampered for centuries. But it is not easy to transplant traditions and all the psychological background which creates them. One cannot help feeling sceptical about the efficacy of a convention which can deteriorate into a personal idiosyncrasy of the Secretary of State or become the play of party forces in a foreign democracy. The foundations of India's fiscal and political autonomy must be more solid and abiding.

6 The Position after the Act of 1935

AFTER THE FEDERATION. What is the nature of parliamentary control over Indian affairs since the Act of 1935? What will be the position of Parliament *vis-à-vis* the Federation of India when the latter comes to be inaugurated in accordance with the provisions of that Act? Will there still be need for the enunciation of conventions or has autonomy been conferred on India in a more direct form? These are pertinent and interesting questions and require to be examined closely.

VIEW OF THE JOINT PARLIAMENTARY COMMITTEE. The Joint Parliamentary Committee which reported on Indian Constitutional Reform in 1934 gave its opinion that with the passing of the new Act, the existing con-

vention will necessarily lapse and that the federal legislature will enjoy complete fiscal freedom. However, they were also emphatic in stating that this freedom could not be utilized for the purpose of injuring and excluding British trade. They therefore recommended that all doubts in the matter should be completely removed by the inclusion of a definite item in the special responsibilities of the Governor-General and by a further amplification of the point in the Instrument of Instruction to him.

SPECIAL RESPONSIBILITY OF THE GOVERNOR-GENERAL
Accordingly, Section 12 of the Act which defines the special responsibilities of the Governor-General contains the following clauses: 'The prevention of action which would subject goods of the United Kingdom or of Burmese origin imported into India to discriminatory or penal treatment'. A whole chapter of the Act—Sections 111-21—is also specially devoted to an elaboration of the same point. The explanatory comment of the Joint Parliamentary Committee gives a clear idea of the intentions of Parliament.

CLARIFICATION OF THE ISSUE 'The imposition of this special responsibility upon the Governor-General is not intended to affect the competence of his Government and of the Indian legislature to develop their own fiscal and economic policy; they will possess complete freedom to negotiate agreements with the United Kingdom or other countries for the securing of mutual tariff concessions. It will be his duty to intervene in tariff policy or in the negotiation or variation of tariff agreements only if in his opinion the intention of the policy contemplated is to subject the trade between the United Kingdom and India to restrictions conceived, not in the economic interests of India but with the object of injuring the interests of the United Kingdom. The "discriminatory or penal" treatment covered by this special responsibility includes both direct discrimination and indirect discrimination. In all these respects the words would cover measures which, though not discriminatory or penal in form, would be so in fact.'

THE CONCEPT OF RECIPROCITY 'The United Kingdom and India must approach their trade problems in a spirit of reciprocity, which views the trade between the two countries as a whole' The reciprocity consists in a deliberate effort to expand the whole range of their trade with each other to the fullest possible extent compatible with the interests of their own people The conception does not preclude either partner from entering into special agreements with other countries but it does imply that when either partner is considering to what extent it can offer special advantages to a third country without injustice to the other partner, it will have regard to the general range of benefits secured to it by the partnership, and not merely to the usefulness of the partnership in relation to the particular commodity under consideration at the moment.¹

NO ABSOLUTE AUTONOMY The exposition clearly shows that the fiscal autonomy which will be conferred upon the future Federation of India will not be unrestricted and absolute as in the case of the Dominions It will be linked up with, and limited by, the doctrine of reciprocity with Britain The implications and the obligations imposed by this doctrine have been elaborated in very wide terms It is intended to apply not only to individual contracts for the import and export of particular commodities but will comprehend the whole range of relationship between England and India The important aspects and consequences of such a position need to be explained at some length

RECIPROCITY MUST BE BASED ON FREE WILL The concept of reciprocity implies a voluntary agreement between two nations Each must be free to decide which will be most beneficial to itself, and in the light of that conviction to enter into specific contracts with the other The terms of the contract must be willingly accepted by both the parties There is no room for compulsion or force in such an arrangement It is entirely the result of friendly negotiations and discussions in pursuit of a common purpose A country's

¹ Report of the Joint Parliamentary Committee, pp 205-6

participation in a scheme embodying this principle presupposes complete freedom from outside control. And as long as that freedom is not predicated for India, reciprocity is only a euphemism for British dictation.

CONTROL OF THE SECRETARY OF STATE Section 12 of the Government of India Act makes it clear that in matters where a special responsibility of the Governor-General is involved, he has to act in the exercise of his individual judgement. Section 14 further adds that whenever he exercises his individual judgement, he will be under the general control and direction of the Secretary of State. The results of this closely woven chain of constitutional definition can be easily imagined. Under its inhibitory action, the fiscal 'autonomy' of India may be conditioned by the personal prejudices of British politicians and the odd movements of opinion in the British democracy. That was the defect of the old method of conventions, and it will continue to exist even under the new federal scheme.

A DIFFICULT DISTINCTION. The line of demarcation between what is described as the legitimate ideal of fostering Indian interests and the mischievous desire to harm British trade will necessarily be very ambiguous and uncertain. So far as mere results are concerned, the two policies may at times even shade off into each other. Any effective protection devised in furtherance of India's industrial advancement will be intended to be, and will actually be, a distinct handicap to the foreign producer.

THE TASK OF JUDGING MOTIVE It is the Governor-General who is empowered to judge the Indian motive and put a correct interpretation on the Indian objective and will. It is a matter of ordinary experience that to reach a proper verdict even on easily ascertainable facts is difficult enough. A verdict on the intangible and mysterious complex of inner motives is, of course, much more difficult, and any definite judgement on them would inevitably tend to be more subjective than detached. It must be remembered that the Governor-

General who will play the role of final judge in fiscal matters cannot help being solicitous about the welfare and prosperity of his motherland. His attitude and actions are bound to be influenced by the opinions of his people. It is therefore difficult for the Indian to feel assured of his impartiality, at least so long as the office of Viceroy is not held by Indians.

MR NEVILLE CHAMBERLAIN'S STATEMENT IN THE COMMONS. There is another aspect of this question which deserves attention. Apart from the purely legal position in such matters, action taken on particular occasions and precedents established in the actual working of the constitutional machine are of the highest importance. They determine, to a great extent, the shape of the living reality. Interpretations and conventions will play a decisive part in the early stages of the operation of the Act of 1935. It is therefore desirable to refer here to the reply which Mr Neville Chamberlain, the British Premier, gave in the House of Commons in June 1937 to Mr Churchill's question regarding the limits within which questions relating to events in India may be answered in Parliament.

Mr Chamberlain said that as long as the Federation of India is not brought into existence and the Transitional Provisions of the Act of 1935 continue to operate, the Governor-General-in-Council remains responsible, through the Secretary of State for India, to Parliament, and therefore questions and answers about the affairs of the Central Government could be asked and given in Parliament as before.

In respect of Provincial Governments he said that, as far as the Ministers responsible to the Provincial Legislatures for the government of the provinces are concerned, it will be entirely inappropriate if the House of Commons were to call in question or criticize by question and answer their policies and activities. The Secretary of State has in fact no longer any responsibility in matters within the control of the provincial Ministers.

On the other hand, in the exercise of his special powers the Governor is responsible to the Governor-General and through him to the Secretary of State. Therefore, in the Premier's view, questions in Parliament on provincial affairs ought not now to be regarded in order unless it is shown that either the action at issue has been taken by the Governor without consulting the Ministers or against their advice or, in the alternative, that the Governor is in possession of powers applicable to a case which he has failed to exercise.

Mr Chamberlain also suggested that even this right ought to be used with discretion and restraint and that His Majesty's Government must themselves exercise careful discretion regarding the extent to which it is expedient in any given case to supply information about facts and events in an Indian province. Unless the new distribution of responsibilities is frankly recognized, provincial self-government in India cannot work and work well.

This view has generally prevailed and the ministerial side of provincial administrations is no longer subject to the supervision and control of the authorities in the United Kingdom.

PART III

THE CENTRAL GOVERNMENT TODAY

VI

CENTRAL AND PROVINCIAL GOVERNMENTS AND THE FUNCTIONS OF GOVERNMENT

1. Distinction between Central and Provincial Governments

THE GREAT SIZE AND DIVERSITY OF INDIA India is a very large country, both in respect of area and in respect of the number of its inhabitants. It is not possible to rule over its immense expanse from a single headquarters, however central its location. A single unified official agency cannot adequately meet the requirements of a huge and diverse population of about thirty-five crores of human beings. For the purposes of governance, it must be, and actually is, divided into several territorial units. The formation of these divisions has been governed partly by historical forces and partly by considerations of race, language, culture, and convenience.

THE PROVINCIAL GOVERNMENTS Every territorial subdivision, known as a presidency or a province, has a government established in and for it. The jurisdiction of these governments is strictly limited to the provincial

sphere, as understood both in the geographical and in the political sense. The range and bounds of this sphere are definitely marked. All provinces stand on a level of equality in relation to each other and no one province is allowed to trespass upon the rights and interests of another. An administrative system of the same pattern and embodying the same essentials is provided for every province, though there may be differences of detail to suit local conditions.

THE CENTRAL GOVERNMENT At the head of all the provinces stands the largest entity, known as the Government of India. It has a distinct sphere of its own, and in several important matters its authority extends to the whole country. The subjects that it manages—for example, defence, customs, posts and telegraphs, railways, etc.—have a vital bearing on all parts and people of the land. It is invested with wide powers of supervision and control, because it is intended to serve as the superior all-India authority.

The Government of India, as the central government of the country, personifies the unity of India, while the Provincial Governments represent its diversity. The former deals with problems which concern the whole nation. The latter are placed in charge of subjects which can best be managed by the different parts. For clarity of exposition, it is convenient to separate the two entities and to describe each in detail. The links that connect them and help to co-ordinate their various activities have also to be properly grasped.

Accordingly, this part of the present work will be devoted to a description of the Central Government. The next part will contain an account of the Provincial Governments, and an analysis of their constitution and working.

2. Threefold Division of Governmental Functions

THREE KINDS OF ACTIVITY Writers on political science have classified the functions of government in three broad categories, and even an ordinary citizen can easily distinguish between them from everyday personal

knowledge They are not of course entirely watertight compartments, but they correctly indicate the different phases of organized social activity Thus, a government has to (i) frame laws adequately and properly, (ii) carry out laws effectively and honestly, and (iii) interpret laws and examine their application in a spirit of justice and progress

THREE TYPES OF INSTITUTIONS A threefold mechanism is usually provided in a modern state for the performance of this threefold duty, the Legislature, the Executive or the Ministers, and the Judicature These institutions are formed on certain definite principles and are closely woven in the fabric of national life

PRINCIPLES OF THEIR FORMATION It is generally agreed that the Legislature ought to be a large and representative body, because it is empowered to pass laws which may affect all and which have to be obeyed by all In determining ideals and policies and prescribing general restrictions, it is appropriate that full scope should be given for the expression of the public will and the divergent view-points that it may include.

On the other hand, the Executive, which is concerned not with deliberation but with action, must be a small, talented, disciplined and compact body If the governmental machine is to move with speed and vigour and if a high level of administrative efficiency has to be attained, it is necessary to collect a small number of trained experts and entrust them with the task of managing routine affairs

Different considerations prevail in the composition of the Judiciary The judge is the guardian of civil privileges, liberties and rights Particular care must therefore be taken to see that the judicial authority is constituted by persons who are learned, fearless and impartial, and whose integrity is above suspicion

METHOD OF STUDY The study of government ultimately resolves itself into a study of these three constitutional and administrative instruments Their form and their powers require close attention Each has to be treated as an independent subject for investigation and

comment Then an attempt will have to be made to elucidate the manner in which they stand related to each other

That is the main scheme of the following chapters The Central and Provincial Governments will be studied as two separate entities In the study of each, the executive and the legislative aspects will be distinguished from each other and explained at length in separate chapters. Then an account will be given of their mutual relations. The Federal Court and the provincial judicature will be described separately in their appropriate places

VII

THE CENTRAL EXECUTIVE: THE GOVERNOR-GENERAL AND CROWN'S REPRESENTATIVE

1. The New Constitution not yet Effective

CHANGES MADE BY THE ACT OF 1935. The Act of 1935 has proposed certain radical changes in the structure of the Government of India. The present unitary system will be transformed into a federation. The Indian States will be associated for the first time with British India in the formation of an all-India polity. The principle of responsibility will be introduced to a certain extent in the working of the central executive. The central legislature also will be considerably reshaped in consistence with the federal doctrine.

THEY ARE TO BE INTRODUCED LATER. However, for various reasons, this part of the Act has not been made operative simultaneously with the introduction of provincial autonomy. The legislative skeleton of the Indian Federation has been provided by the Act, but it has yet to be quickened into life. The date of its actual inauguration has still to be announced. In September 1939, England declared war on Germany and since then the whole of the British Empire has been engaged in a struggle of the greatest magnitude. It has been decided that during the currency of the war the introduction of the federal scheme shall be suspended. It is even possible that in view of the severe criticism to which the scheme has been subjected in India, it will be reconsidered at the end of the war and modified in many respects.

THE PRESENT CONSTITUTION. As long as the new Act does not come into force in this particular respect, the constitution of the Government of India as framed by the Act of 1919 but with certain necessary modifications will continue to function. It has been incorporat-

ed in the Transitional Provisions contained in Part XIII and the Ninth Schedule of the Act of 1935. The following pages therefore describe at length the unitary Central Government which is still actively functioning but which may be superseded by a federal structure at some future date. In a subsequent part a glimpse is given of the future as it is likely to be if and when the Federation of India, as prescribed by the Act of 1935, is actually brought into existence.

2. The Governor-General and the Executive Council

The Executive side of the Central Government is composed of the Governor-General of India and his Executive Council. They are inseparably linked with each other and must work as a homogeneous body.

But the Governor-General is so dominant in the Indian constitutional picture, that it becomes necessary to study in detail all the lines and colours of his individual portrait which is included in that larger picture. He is not merely the part of a whole but, in a diminutive measure, himself constitutes a whole.

For purposes of explanation, therefore, the executive side of the Government of India is split up into two parts. One deals with the head of that Government and the other is devoted to a description of his Council.

3. Historical

BEFORE THE REGULATING ACT As long as the Company's activities in India were purely commercial, it was not necessary to appoint an official like the Governor-General. Before the middle of the eighteenth century, the territorial possessions of the Company were few and they were merely the accidents of its trade. Bombay, Madras and Calcutta were the principal centres of the Company's business, and separate Governors, assisted by Councils, were appointed for those areas for carrying on trade. In status and authority these three Governors stood on a level of perfect equality. They were united in a common

subordination to the Company's Court of Directors in distant England.

When the Company began to fight wars and build up an empire in India, it became necessary to co-ordinate its policy and resources in different parts of the Indian continent. The requirements of a military and imperial career were more onerous and complicated than those of an ambitious trader. A unity of command and direction became absolutely essential in all the activities of the Company. If a sense of oneness was not inculcated among all its servants throughout the country, its efforts would have been dissipated in a large number of futile adventures. That would have been very disastrous.

CREATION OF THE OFFICE The Regulating Act of 1774 created the office of Governor-General for the Company's dominions in India, and Warren Hastings became its first distinguished holder. The importance and responsibilities of the office increased with the increase in the Company's authority. The Acts of 1784 and 1833 reiterated the supreme position of the Governor-General in the Indian polity. Strong-willed personalities like Cornwallis, Wellesley, Lord Hastings and Dalhousie established traditions of power and prestige which exalted the office of Governor-General to an almost regal and certainly awe-inspiring eminence. After 1858, the Governor-General was invested with the additional and unique dignity of the Sovereign's representative. Since then he has been designated as the Viceroy of India.

4. Appointment, Qualifications and Tenure

APPOINTMENT AND QUALIFICATIONS. The Governor-General is appointed by His Majesty, acting on the advice of his Prime Minister. Nomination to this high office evidently cannot be determined only by academic or professional merits. But there are certain well-understood tests which must be fulfilled by the person who is selected. The Governor-General is invariably chosen from the British aristocracy and often possesses

high family connexions. Usually, he has made his mark as administrator, statesman or politician before he is invited to go out to India as Viceroy. Generally he has ample parliamentary experience to his credit. Many holders of the viceregal office have previously risen to the position of Cabinet Ministers. The training and culture of such scions of noble houses is supposed to impart to them a robust freshness of outlook and a broad, sympathetic vision, which are particularly valuable assets to the head of a state.

A NON-PARTY OFFICE. The office of Governor-General is essentially a non-party office. The dignitary who holds it does not change with a change of ministry in England. Continuity of executive government and freedom from the disturbing effects of purely artificial fluctuations are ensured by this salutary practice. In recent years, Lord Reading served under three different ministries and Lord Irwin (now Lord Halifax) served under two. Acute political differences with a new Secretary of State, who may have come into office after a dissolution of Parliament and fresh elections, may sometimes precipitate the resignation of a Governor-General, but such instances are very rare. Thanks to the high standard of British political sagacity and public morals, the Government of India is not allowed to be turned into a shuttlecock for the sport of the party leaders of Great Britain. The Indian question is always declared to be a question above party. There always seems to be a general consensus of opinion among British politicians of all schools of thought about the policy which the British should adopt towards India.

SALARY AND ALLOWANCES. The salary of the Governor-General is not to exceed the sum of Rs. 2,56,000 a year. Besides the salary, there are allowances of various kinds. The actual figures provided in the budget for 1937-38 were as follows:— Salary Rs. 2,50,000; sumptuary allowance Rs. 40,000; expenditure from contract allowance Rs. 1,44,300; conveyance and motor cars Rs. 43,000; Private Secretary and Department Rs. 2,63,800; Military Secretary and Department Rs. 3,22,400; tour

expenses, special trains, etc, Rs 4,70,000 Besides, the Band and the Bodyguard cost Rs 1,84,600 A certain amount was also spent on the maintenance of viceregal residences An Outfit and Equipment allowance of £5,000 is paid to the Governor-General when he is first appointed It has been calculated that the annual average cost of the Governor-General, his office and maintenance, would amount to over Rs. 7,62,000¹

TENURE AND LEAVE Till the passing of the Leave of Absence Act in 1924, the Governor-General, the Governors and the Executive Councillors were not entitled to any leave of absence outside India If they had to leave the country for any reason they were required to relinquish their office The Act of 1924 has now been repealed but its clauses have been incorporated in the Ninth Schedule of the Act of 1935 According to them, the Secretary of State may grant to the Governor-General leave of absence from India for urgent reasons of public interest or of health or of private affairs The period of such leave is not to exceed four months and it is not to be granted more than once during his tenure of office Suitable leave allowances are provided for under the rules made by the Secretary of State

5. Relations with the Executive Council

HE REGULATES THE WORK OF THE COUNCIL The duties and powers of the Governor-General are numerous and varied He is the head of the Indian administration and the highest official in the land He, together with his Executive Council, is entrusted with the task of maintaining peace, order and good government in India

The Governor-General is the president of his Executive Council and has power to nominate a vice-president from among its members to preside in his absence. He has power to make rules and regulations for conducting the meetings of the Executive Council He

¹ K. T. Shah, *Federal Structure*, p 132.

distributes work among its different members. In case of an equality of votes in the Council on any question, he can give a casting vote

He exercises general supervision over the work of the Executive Councillors and can make himself closely acquainted with the details of departmental administration, either directly from the members or from their immediate subordinates, the Secretaries. These officers enjoy a unique and anomalous constitutional position. They have direct access to the Viceroy over the heads of their immediate superiors

HIS PATRONAGE In the selection of members to the Executive Council, the opinion and influence of the Governor-General count for a great deal. His recommendations in the matter are generally accepted by the higher authorities. He has also the power of appointing Governors of provinces other than Bombay, Madras and Bengal. A large amount of important patronage is thus in his hands. This factor is not particularly favourable to the growth of that spirit of independence in the Executive Council which is found to be a characteristic feature of the British Cabinet

THE BRITISH CABINET IS NOT BUREAUCRATIC. Till 1941 there was another significant difference between the two institutions. Members of the Cabinet are not life-long bureaucratic servants. They are men who follow different professions, and may be lawyers, doctors, industrialists, traders, aristocrats and even labourers. They are not expected to be experts in the administrative sphere. They find a place in the Cabinet because they are the leaders of Parliament and, in the last instance, of the nation

THE EXECUTIVE COUNCIL IS BUREAUCRATIC On the other hand, before its expansion in October 1941, the Executive Council of the Governor-General was composed to a large extent of bureaucratic officials. Membership of it was the prize which was earned at the end of prolonged service in the different departments of government. To rise to the heights of an executive councillorship was the life-long ambition of every civilian. To discover administrative talent and to reward it by the

conferment of that exalted office was the objective of those who control the Indian bureaucracy.

ITS ATTITUDE Thus, in the fundamentals of its composition and outlook, the Indian Executive Council differed from the British Cabinet. The former was naturally more susceptible to superior control. Its members were more subdued in their opposition to the Governor-General when they disagree with him. There was an atmosphere of discipline and submission in the usual routine of its working. It is otherwise with the Cabinet, which has more decided traditions of equality and independence. It is hoped that the atmosphere of the newly expanded Council with its larger number of non-officials and of Indians will be more akin to parliamentary traditions.

THE GOVERNOR-GENERAL DOMINANT The Governor-General of India can, indeed, be technically described as only one among several members of the Executive Council. He has an additional or casting vote in case of a tie. Except on the rare occasions on which he chooses to exercise his emergency powers, he might give the impression of being only first among equals. However, the president of the Executive Council is also the Governor-General and Viceroy, and the ramifications of this combination are extremely formidable.

POWER OF OVERRIDING THE COUNCIL Warren Hastings was very unfortunate in his relations with the Executive Council. Some of its members adopted an attitude of implacable hostility to him. Their reckless obstruction demoralized the whole administrative machinery and created unseemly deadlocks. Cornwallis became wiser by the sad experience of his predecessor. Before he accepted the office of Governor-General, he made the important stipulation that the Governor-General should be vested with power to overrule the whole or part of his Council whenever he is convinced of the futility and harmful nature of its opinion. The demand was granted and Parliament passed a special Act in 1786 to that effect.

ITS EXCEPTIONAL USE Ordinarily, every measure

brought before the Executive Council requires the assent of the majority of its members in order that it should be passed. It may be that the Viceroy finds himself out-voted on occasions. Normally, he submits to the wishes of the majority. But he has the exceptional power of overriding and setting aside its decisions. This power is indeed very rarely used. In fact, since its creation, it has been used only once, in 1879, by Lord Lytton to reduce the cotton duties. But its mere presence is enough to chasten any particular petulance on the part of the Executive Council.

THE BRITISH PRACTICE In a constitution like that of Britain, an internal conflict in the executive will be shifted to Parliament and finally to the nation. A serious dispute cannot be confined to the Cabinet. The issue will be determined ultimately by national vote. Therefore, it is not necessary to equip the executive with any extraordinary overriding power.

6. Relations with the Legislature

HIS POWERS OVER THE LEGISLATURE The Governor-General has considerable powers with reference to the legislature. Up to the Reforms of 1919, he was the *ex officio* president of the Imperial Legislative Council. After the introduction of the Montford Reforms he ceased to have that privilege, though he still has many powers over the legislature. He can address both chambers of the central legislature, he summons, prorogues and dissolves them, he can extend the period of their tenure in special circumstances. He appoints a date and place to hold fresh elections, and also a date and place for holding sessions of either chamber.

His previous assent is required for the moving of certain kinds of bills in the central legislature. He can stop the proceedings of either of the chambers on any bill, clause or amendment, if he feels that the discussion is likely to affect the safety and the tranquillity of the Raj. He can send bills back for reconsideration by the legislature. His assent is required for all bills passed by the central legislature before they can have

the force of law. This is also true of certain provincial legislation. He can require certain specified bills to be reserved for the consideration of His Majesty-in-Council.

CERTIFICATION. In addition to these more or less routine powers which the head of an administration must possess, an exceptional overriding veto against the decisions of the legislature was bestowed upon the Governor-General of India by the Act of 1919. This weapon was forged on the anvil of the Montford Reforms. It corresponds to a similar veto possessed by him against the Executive Council. 'Where either chamber refuses leave to introduce or fails to pass in a form recommended by the Governor-General, any bill, the Governor-General may certify that the passage of the bill is essential for the safety, tranquillity or interests of British India', and thereupon, even if the legislative chambers refuse to pass such a bill, it can become an Act by the mere signature of the Governor-General.

REASONS FOR ITS CREATION A grave constitutional anomaly was thus created. A single head of the administration was empowered to defy the opinion of an elected legislature. Mr Montagu and Parliament had evolved a peculiar constitutional plan. It attempted to combine two systems which are inherently incompatible. The legislatures were materially increased in size and were made more democratic and representative. Larger powers were conferred upon them. They were to be the agency for the enactment of all laws. A part of the budget was made subject to their vote and they were thus called upon to supply a small portion of the resources of the state. Yet the executive was to be in no sense subordinate to the legislature. It was to continue to be responsible only to a Parliament functioning in a distant country.

AVOIDING DEADLOCKS The severe logic of such an incongruous blend of conflicting constitutional principles is self-evident. A serious difference of opinion between the two vital parts of government may lead to a complete deadlock and bring the whole machinery to a

standstill. An effective authority has to be provided to bring such an impasse to an end. But, as the executive is ultimately responsible to Parliament and not to the Indian legislature, it must be enabled, if necessary, to assert itself against the latter, for the liquidation of those responsibilities. Given the hypothesis that full political freedom is not to be bestowed upon India, the deduction drawn above is unavoidable. The irresponsible executive must be also a superior force in the country's governance.

THE POWER MUST BE RARELY USED That certification was meant to be a real power and not a mere ornamental possession is amply proved by experience. It appears to have been interpreted as a normal instrument which can be freely used from day to day. Yet constant exercise of such a power cannot fail to prove irritating to Indian thought and exciting to Indian sentiment. The goal of British policy in India is stated to be the development of responsible government in all its fulness at an early date. Therefore, the greatest restraint must be observed in making use of extraordinary powers like certification. A democratic appearance alone is not enough; the reality of popular control is infinitely more important.

ORDINANCES / Besides possessing these powers, the Governor-General is also authorized to make and promulgate ordinances for the peace and good government of British India or any part thereof. An ordinance so made has the force of law as much as if it were an Act passed by the legislature. The period of its application is not to exceed six months at a time, though it can be renewed for a further succession of such periods. An ordinance is thus a legislative measure, partaking of the character of an Act, but emerging from the head of the executive in his executive capacity. It is of course intended to be very rarely used. When the legislature is not in session and a great emergency suddenly arises, remedial measures can be immediately adopted by the exercise of such reserve powers. The Civil Disobedience Movement of 1930-32 is inseparably associated in the

public mind with the promulgation of a large number of ordinances by the Governor-General. Such ordinances were also issued at the outbreak of war in 1914 and 1939.

7. Status as Viceroy and Crown's Representative

HIS POWERS AND STATUS AS VICEROY The Governor-General of India is not only the head of the administration of the land. Over and above that, he personifies in himself the British sovereign and represents his master in the unavoidable absence of the latter from the land of his governance. He therefore enjoys all the dignity and prestige and special privileges which the sovereign himself would enjoy if he chose to stay in India. He has the prerogative of mercy and pardon. On behalf of his sovereign, he receives homage from the Indian princes. To them, he symbolizes the Crown and all the unlimited sovereignty of the Crown. The Governor-General represents His Majesty in his dealings with foreign princes. All the grandeur of royalty attaches to him as his master's deputy. The sense of detachment that pervades the environment of kingship, also pervades, to a certain extent, the environment of the accredited viceroy of that kingship.

THE CROWN'S REPRESENTATIVE Till the Act of 1935, though the Governor-General was thus functioning as the representative of the Crown, the two offices as such were not legally separate from each other. The Governor-General became *ipso facto* the agent and deputy of the Crown. The Act of 1935 has introduced an important change. It has created a new official post the occupant of which is designated as the Crown's Representative as distinguished from the Governor-General of India. It is only this Representative or persons acting under his authority that can exercise in India the functions and powers of the Crown in its relation to the Indian States. The Governor-General will continue to be the head of the administrative system of the land. It is lawful for His Majesty to appoint one person to hold both these offices and normally they will be and are held by the same man. However, it is now

possible in law for the Crown to appoint two separate dignitaries to perform the two different kinds of functions that are defined for them.

3. Influence

HIS INFLUENCE That the cumulative influence of this lofty official upon the administration of India is bound to be immense is obvious. His high social status and rank, his aristocratic connexions, occasionally his political influence as an active party leader, are circumstances which give him prominence in comparison with his colleagues in the bureaucracy of India. His large powers, ordinary and extraordinary, as the head of the administration, his exalted social status as the direct representative of the sovereign, and the large and lucrative patronage in his possession, are factors which give him supreme eminence in the state. A heavy responsibility devolves upon him in maintaining the safety of the British Raj.

The combination of all these circumstances raises the Governor-General of India head and shoulders above the other officials in the land. If he is endowed with a master mind and an assertive temperament, his views can colour every department of administration. If he happens to be a man of convictions and capacity, his personality is bound to permeate all important matters of policy and detail that come to be disposed of by any one of his colleagues in the Executive Council individually or by all of them collectively.

COMPARISON WITH THE PRIME MINISTER The Prime Minister of England, presiding over the British Cabinet, appears to be only first among equals, a leader of his peers. The difference between him and his colleagues is created and tolerated only for the exigencies of smooth constitutional working. The Viceroy of India has the appearance more of a superior than of an equal. Constitutionally, the distance between him and his colleagues is far greater and much more fundamental than that between the Prime Minister and his colleagues in the Cabinet.

VIII

THE CENTRAL EXECUTIVE: THE EXECUTIVE COUNCIL

1. Constitution

It may be noted that the Governor-General's Executive Council will vanish from the Indian constitutional picture if and when the Federation of India as prescribed by the Act of 1935 comes to be inaugurated. Its place will then be taken by a body of Counsellors and the federal ministry. Till that time, of course, the Council will continue to exist and function. The Council was created by the Regulating Act in 1774, and its number, which was originally four, was increased to six during the course of the century that followed, on account of an increase in the governmental work.

The present constitution of the Council, which is practically the same as that laid down in the Act of 1919, is prescribed by the Ninth Schedule of the Act of 1935. Its members are appointed by His Majesty, and their number is such as His Majesty thinks fit to appoint. No specific limit in respect of the figure has been mentioned. It is therefore possible to enlarge the Executive Council without any amendment of the Act. The number of members after the Montford Reforms was eight, including the Governor-General and the Commander-in-Chief, but it has been increased recently. At least three of the members must be persons who have been for not less than ten years in the service of the Crown in India. One must be a barrister of England or Ireland or an advocate of Scotland or a pleader of an Indian High Court of not less than ten years' standing. From 1921 to 1941 the number of Indians in the Council was three. In strict legal theory, there could be no objection to all the members of the Council being Indians provided they are possessed of the requisite qualifications.

2. Expansion in 1941

SUSPENSION OF FEDERATION An important development in regard to the Governor-General's Executive Council took place at the end of October 1941. The federal part of the Act of 1935 had not been made operative simultaneously with the inauguration of provincial autonomy in April 1937. After the outbreak of the present world war, its introduction was suspended indefinitely, and it was even announced that the whole question of the future constitution of India would be re-examined and reconsidered after the conclusion of the war. The proposed federal executive did not therefore come into existence. It was to have been composed of Counsellors who were to be responsible only to the Governor-General, and Ministers who were to be answerable to and removable by the legislature. In spite of its unsatisfactory character, such a measure, if it had materialized, would have been some advance over a wholly irresponsible and irremovable executive council. But it was not to be.

INTERIM REFORM OF THE COUNCIL There was keen disappointment in India at this turn of events. It had been hoped that a national government controlled by the legislature could and would be set up at the centre, particularly in view of the grave emergency that had been threatening the country. The proposal was, however, ruled out. Parliament was not prepared to discuss any controversial issue or to initiate any major change in the constitutional structure of India while England was engaged in a life and death struggle. His Majesty's Government were, however, prepared, as an earnest of their desire to see the Government of India increasingly entrusted to Indian hands, to sanction whatever reform was possible as an interim measure within the framework of the existing constitution.

UNDER THE ACTS OF 1919 AND 1935 The Act of 1919 and subsequently the Transitional Provisions of the Act of 1935 had removed the restriction on the number of members of the Executive Council. No definite figure

was fixed by Parliament, and the actual strength of the Council was left to be determined from time to time by His Majesty in his pleasure. The number therefore could be increased or decreased without reference to Parliament. Nor had any Act laid it down that the Executive Council must necessarily contain a certain percentage of Europeans. The qualifications prescribed for its membership had reference to a minimum period of service under the Crown or a minimum standing as a lawyer. Even before the Morley-Minto reforms of 1909, it was theoretically and legally possible for the Council to be composed entirely of Indians, though ironically enough not a single Indian had actually a place in it. After the Montagu-Chelmsford reforms the number of Indian members rose to three, as against five Europeans including the Viceroy.

ENLARGEMENT OF THE COUNCIL It was felt that, even if no radical change could be introduced in the constitutional status of the Council, its substantial expansion and Indianization could go a long way towards transference of authority into the hands of Indians, particularly if the Indian members were placed in a clear majority. Accordingly it was decided to take that important step, and the decision was announced by the Government of India in a communique issued in July 1941. The Executive Council was to be enlarged by the addition of five new seats, and the appointment of five Indians to hold them was also mentioned in the communique. This meant an increase in the total number of the members of the Council, excluding the Viceroy, to twelve, of whom eight were to be Indians—that is, they were to be in a majority of almost two to one. The Council thus expanded and constituted began to function from October 1941.

REASONS FOR THE ENLARGEMENT The reason given in the Government of India's communique for the expansion of the Executive Council was quite modest—merely increased pressure of work in connexion with the war and the need for the creation of some new portfolios. The Secretary of State, however, in a speech made in

the House of Commons gave a further clarification of the issue. It was, he said, the wish of His Majesty's Government 'to associate Indian leaders more intimately and responsibly with the Government of their country during the war. We wished to do so in order to emphasize the undoubted unity of purpose between Indians and ourselves in this struggle . . . We also cherished the hope that in the process of working together in the common cause, Indian statesmen would find new bonds of union and understanding among themselves . . . It would afford a wider range of administrative responsibility and experience to Indian public men.'¹ This of course is not the democratic and responsible government demanded by Indians. But it is claimed that the new development marks a change if not in the form of the constitution at least in its spirit. For the first time in the history of British India, the work of government is entrusted to a body which contains a majority of Indians, though they cannot be described as the elected representatives of the Indian people.

PORTFOLIOS. The distribution of portfolios among members of the expanded Executive Council was as follows:—(1) Viceroy and Crown's Representative (2) Commander-in-Chief, (3) Member for Home Affairs, (4) Member for Finance, (5) Member for Communications, (6) Member for Supply, (7) Member for Civil Defence, (8) Member for Information, (9) Member for Labour, (10) Member for Commerce, (11) Member for Law, (12) Member for Education, Health and Lands, and (13) Member for Indians Overseas. Of these the first five portfolios were held by Europeans and the remaining eight by Indians. The former group contained the most important departments of State and the fact that none of them was assigned to Indian members was widely criticized.

Within less than a year of this expansion, membership of the Council was further enlarged from 12 to 15 (excluding the Viceroy) in July 1942. The Communications Portfolio was split up into two new portfolios,

¹ *Times of India*, 2 August 1941

those of War Transport and Posts and Air (Civil Aviation). A new portfolio of Defence was also created. An innovation was introduced by the appointment of a non-official European to the Executive Council. He was entrusted with the portfolio of War Transport and the remaining two portfolios were given into the hands of non-official Indians. There was a further reshuffling of portfolios in 1943—though the total number of members of the Council was not increased—when it was necessary to appoint a separate member in charge of Food

3. Powers, Functions and Tenure

POWERS AND FUNCTIONS The superintendence, direction and control of the civil and military government of India were vested in the Governor-General-in-Council till the Act of 1935. Every provincial government had to obey that authority and to keep members of the Council constantly and diligently informed of all matters of importance in its administration. After the introduction of Provincial Autonomy as envisaged by the Act of 1935, the powers of the Governor-General-in-Council have been necessarily reduced so as to make them consistent with the autonomous status of the provinces. The general power of superintendence, direction and control over the civil and military government in India has been abolished.

The executive authority of the Governor-General-in-Council now extends to matters with respect to which the central legislature has power to make laws, that is, to subjects mentioned in the Central or Federal Legislative List. It does not extend, save as expressly provided for in the Act, in any province to matters with respect to which the provincial legislature has been given power to make laws, that is, to subjects mentioned in the Provincial Legislative List. There is therefore a substantial reduction in the powers of the Central Government. The formation of new provinces is also no longer within their competence. In the sphere in which political control has been transferred to the

people of the province the authority of the Governor-General-in-Council has been considerably withdrawn.

The Governor-General-in-Council cannot declare war or commence hostilities or enter into a treaty without the express order of the Secretary of State. In any emergencies when hostilities have been already commenced or preparations for them have been already actually made against the British Government in India, the Governor-General-in-Council can declare war and immediately send intimation to the Secretary of State. The Governor-General-in-Council has, by delegation, powers to make treaties and arrangements with Asiatic States, to exercise jurisdiction and other powers in foreign territory and to acquire and cede property. He also enjoys such powers, prerogatives, privileges, and immunities appertaining to the Crown as are 'appropriate to the case and consistent with the system of law in force in India.'

TENURE AND LEAVE The tenure of office of a member of the Executive Council has been fixed by a well-established custom at five years. The Leave of Absence Act of 1924 has now been repealed, but according to the Ninth Schedule of the Act of 1935, the Governor-General-in-Council may grant to any member leave of absence for urgent reasons of health or private affairs. Such leave cannot exceed four months and cannot be granted more than once during his tenure of office. Suitable leave allowances have been provided for under rules made by the Secretary of State-in-Council. The salary of a member of the Council used to be Rs. 80,000 per year till 1941 but was thereafter reduced to Rs. 60,000 per year.

4. Method of Working

BEFORE 1861. Originally the Executive Council of the Governor-General 'worked together as a board and decided all questions by a majority of votes.' There was no systematic distribution of work among its members. Every question that came up for the disposal of the Governor-General-in-Council was disposed of by

the Council as a whole, sitting collectively. There was no division of labour, no allocation of departments to individual members. This sort of working in a mass entailed enormous delay and began to prove increasingly difficult as the nature of the Government functions became more complex and their scope widened. The appointment of special members for Law and Finance in 1833 and 1861 respectively was an acknowledgement of the unworkable nature of collective council work. Lord Canning abandoned the system altogether and carried to a logical conclusion the principle that was initiated in 1833.

THE PORTFOLIO SYSTEM He distributed the ordinary work of the departments among the members and laid down that only the more important cases were to be referred to the Governor-General or dealt with collectively. This is what is known as the portfolio system which continues to exist to the present day. Under the working of this system, each member, in regard to his own department or departments, has the final voice in ordinary departmental matters. He is councillor and administrator together. Any subject of special importance or one in which it is proposed to overrule the views of a Provincial Government must be referred to the Viceroy, and so must matters which originate in one department but also affect other departments. The members generally meet in council once a week and discuss questions which the Viceroy desires to put before them or which an overruled member might desire to have discussed by the Council. In any difference of opinion, the decision of the majority ordinarily prevails, the Viceroy having an overriding veto in exceptional circumstances.

NO COLLECTIVE RESPONSIBILITY In the nature of things, the Viceroy's Executive Council cannot be described as a cabinet in the British sense. For a long number of years its composition was entirely bureaucratic, and even the inclusion of a few non-official Indians did not make any difference in that status. It could not have worked on the principle of collective

responsibility, members coming into and going out of office together under the leadership of a common leader, and pursuing a common political programme to which they had pledged themselves at the time of election. With the inclusion of eight non-official Indians in the Council in 1941 it has been suggested that the cabinet system of working may, by convention, be introduced. Referring to this matter, the Secretary of State said in the House of Commons¹ that the new members would share full statutory collective responsibility of the whole Council as well as being responsible for the administration of important departments. The language of this statement is vague, it is not clear that collective responsibility as it operates in the British cabinet is intended to be introduced. Nor does it seem to be possible as long as officials are selected to be members of the Council, even granting that all non-official members, selected individually and without the unifying influence of party affinity, agree to abide by the principle.

THE SECRETARIES Immediately subordinate to the member in charge is the officer known as the Secretary. He is in charge of the departmental office. His position corresponds, as the Decentralization Commission has pointed out, to that of a permanent Under-Secretary of State in the United Kingdom. There is however this difference. In India, the Secretary is allowed to be present at the meetings of the Executive Council to furnish any detailed information that might be required regarding his own department. Besides, he is required to attend on the Viceroy usually once a week and to discuss with him all matters of importance arising in his department. He has the right of bringing to the Viceroy's special notice any case in which he considers the concurrence of the Viceroy with the member's action or proposal to be necessary. His tenure of office is usually three years.

Thus the constitutional position which he enjoys is unique. He is a subordinate, having the special privilege of direct access to the superior of his immediate superior.

¹ *Times of India*, 2 August 1941

He can influence the mind of the Viceroy about any matter in his department without the knowledge of the member in charge. The system is a remnant of the old days when it was considered desirable to keep a check over the actions and the departmental independence of the Executive Councillois. The Governor-General as the head of the administration was therefore empowered to keep in direct touch with departmental working through the Secretaries. Indian public opinion is inclined to condemn this sort of constitutional anomaly as likely to encourage mistrust and misunderstanding, particularly after the admission of Indians to the Executive Council.

5. Comparison with British Ministers

THE CONSTITUTIONAL POSITION BEFORE OCTOBER 1941. The student of constitutions will perceive that till very recently an English Minister differed essentially from a Member of the Indian Executive Council. The former is a politician first and an administrative officer afterwards. Indeed he comes to be the latter because he has been the former. English Ministers are not lifelong bureaucratic servants, persons in Government service are precluded from taking seats in Parliament and therefore in the Cabinet. Things were different in India till the expansion of the Council in October 1941. A few Indian public men could find a place in the Council, if chosen to fill the appointments by the Viceroy. But others were selected from the most successful servants in the administration. Elevation to the Executive Council and enjoyment of the prospects that it offered were among the principal attractions of the Indian Civil Service.

The initiative and independence characteristic of a body like the British Cabinet, which excludes bureaucratic officials from membership, were naturally absent from the Executive Council as a whole in India. Nor did its members possess that sense of equality which permeates the relations of the English Ministers with their chief, the Prime Minister. The important patron-

age in the hands of the Governor-General was not a negligible factor in this connexion. There were still higher rungs in the official ladder than an Executive Councillorship, which might indeed lead to them.

Much of course depended upon the head. He was a stranger to the land which he was sent out to rule. He set out to work with a bureaucracy which had crystallized traditions. It supplied the expert knowledge about men and things in India, obtained after prolonged years of service on the spot. The claims of such a body to be recognized as an authoritative and correct guide could not be lightly disregarded, and sometimes it was not the Viceroy but the Council which really ruled. However, to a Viceroy endowed with a distinct individuality and vigour of will, the constitutional atmosphere of the Council was congenial to the development of his personal influence and the acceptance of his lead in all matters of policy and detail. All the same, the assistance of the Executive Council was indispensable to the Viceroy in all circumstances. It maintained the continuity of administration. And except under abnormal circumstances no Viceroy would think of exercising his extraordinary prerogatives in order to override the declared opinion of the Executive Council. As J. S. Mill said, the advisers attached to a powerful and self-willed man ought not to be put under conditions which would reduce them to a cypher.

AFTER EXPANSION The recent enlargement of the Executive Council and its substantial Indianization and non-officialization have naturally changed its complexion. It has ceased to be a predominantly bureaucratic body, though a certain official element still persists in its composition. It is true that the non-official councillors are not necessarily required to be elected members of the central legislature nor are they responsible to and removable by it. However, it is hoped that conventions and traditions which may be set up in the performance of its duties will approximate to the parliamentary atmosphere in all essentials.

IX

SOME GENERAL INFORMATION CONCERNING LEGISLATURES

The legislature is one of the most vital parts of a country's constitutional system in modern times. The significant position that it holds in national life must be clearly appreciated. Certain principles have now come to be specially associated with the formation of legislative chambers and with the definition of their powers. The routine of their working has also crystallized along certain broad lines. The law-making bodies of any particular country have to be judged in the light of these general standards.

There are two types of legislatures in Indian polity. One functions for the Central Government and the other for the provinces. A detailed study of their structure, powers, and operation may, with benefit, be preceded by a very brief description of a few main features of legislative institutions, which will supply a proper perspective for an understanding of their progressive growth in India and their present value.

1. Importance of the Legislature

THE LEGISLATURE CONTROLS THE EXECUTIVE In all important Western countries the legislature has now acquired a peculiar importance. Originally, it was predominantly, if not purely, a law-making body. Its function was to pass measures which required the force of legality. The business that it transacted pertained primarily to Bills and Acts. From this position of comparative simplicity the legislature has now evolved into a body which exercises general control over the administration.

The principle and practice of political responsibility move round the pivot of the legislature's supremacy over the executive. The powers and functions of the

legislature are the touchstone which assesses the degree of popular control that obtains in a constitution. Modern legislatures are not only law-making bodies. they make laws, they vote grants of the necessary money, they practically appoint the Ministers, direct, control and modify their policy, and in case of a disagreement, even dismiss them. The daily routine of departmental management is not, indeed, looked after by them, but the general line of administrative action and the general principles governing the policy of the state are all inspired and dictated by their opinions and views. In other words, an all-sided control of the state vests in the legislature in a form of government which is described by constitutional writers as responsible. The English Cabinet, for instance, is the product of Parliament and completely amenable to it.

STRUCTURE OF THE LEGISLATURE This unique importance that has progressively come to be attached to the legislature in modern days is the natural consequence of the changed character of the structure of legislative chambers. They are now elected bodies largely reflecting popular opinion and therefore carrying with them the prestige of being the accredited mouthpieces of the whole nation. To find the extent and the reality of the legislature's predominance over the executive is to measure the progress in democratization and responsibility of that form of polity. The more complete the subordination of the executive, the greater is the advance in the direction of responsibility. The legislatures in India, therefore, whether in the Central Government or in the provinces, have to be judged by this criterion.

2. The Functions of a Legislature

I LEGISLATIVE A legislature's functions and powers can be divided into different parts. For instance, they can be described separately as referring to legislation, or to administration, or to finance. The meaning of the first division is clear. No measure can obtain the force of legality unless it is passed by the legislature. Everything that is incorporated into the law of the land, and

obedience to which is required of the citizens, has to receive the legislature's sanction before it can be so incorporated and enforced. Unless otherwise provided, no Bill which is not voted by the legislature can have application in a court of law.

II ADMINISTRATIVE The control over administration is exercised in various ways (i) by moving resolutions (ii) by moving votes of no confidence or censure, (iii) by moving adjournments, and (iv) by asking questions and supplementary questions to elicit information about departmental details.

(i) RESOLUTIONS On any matter of public importance the legislature might express a clear opinion after having discussed the issues thoroughly. This expression of opinion is in the form of a recommendation to the Government. It has no binding legal force. It is not a law and has not to pass through the elaborate procedure to which every Bill is subjected before its final consummation into an Act. Yet the expression of opinion has a value of its own. It makes plain the views of the elected representatives of the people, and therefore serves as an indicator which records the strength and the direction of popular opinion. A clear indication of the popular will cannot be ignored by any executive Government having a sense of responsibility. It serves to guide correctly, if not to control rigidly, any steps that may be contemplated by the executive authority.

(ii) VOTE OF CENSURE OR NO CONFIDENCE A vote of no confidence or censure is the most direct way of expressing disapproval and of indicating the agency which it is desired to condemn. In a responsible administration, occasions for votes of censure are rare, for, before matters come to that pass, numerous indications are given of the existing displeasure and they are immediately understood. This right is of particular use in those forms of government where the executive cannot be removed from office by the legislature. A direct and emphatic condemnation of the actions of irresponsible

officials is likely to serve as a moral restraint upon them

(iii) **ADJOURNMENTS** Adjournment motions are intended to direct the attention of the house and the Government to any extraordinary happening involving public weal or interest that might take place during the actual session of the council or that may have taken place only a short time prior to the meeting of the session. Any member may beg leave to move that the regular business on the agenda be temporarily suspended and that the house do discuss the extraordinary occurrence, provided the president allows the motion. The president need not do so if he feels that the matter is not of sufficient importance. Motions for adjournment save the discussions of the chamber on prominent and burning topics of the day from being stale

(iv) **INTERPELLATION** The power of asking questions and supplementary questions is extremely valuable. It serves to throw important sidelights on the administration by enabling members to elicit information regarding routine departmental management. It is useful in exposing any unjust or tyrannical abuse of the freedom of judgement and discretion that has necessarily to be allowed to the executive. Any member of the legislature can put a question on a matter of public interest, subject to its disallowance by the president, and if the answer given proves unsatisfactory, either the member who puts the question originally, or any other curious or dissatisfied member may put further supplementary questions. This at times approximates to a regular cross-examination. Details which are too trivial to be discussed in the form of resolutions and which are too important to be completely ignored can be brought up for public criticism through the exercise of the power of interpellation.

Publicity is the greatest check and the greatest corrective to the waywardness of all normal Governments. Publicity is of still greater value when the form of government is an irresponsible bureaucracy. Resolutions, adjournments, votes of censure, questions, and

supplementary questions are instruments of publicity, and so long as the working of the Government has not become mechanical and unhuman, the fear of public criticism and public exposure proves a salutary restraint upon the actions of Government officials.

III FINANCIAL The last and most important power that a legislature can enjoy is control over the purse, that is, over taxation and expenditure. The great constitutional struggle in England throughout the Stuart period, and even earlier, centred round the disputed question whether the King could levy taxes without the consent of the people and spend them as he liked, irrespective of the wishes of Parliament. The most glorious achievement of the popular party in the struggle was the establishment of the principle that the money which the King's authority wanted to collect from the people by way of taxation must be voted by the representatives of the people assembled in Parliament. Parliament also decided the manner of its collection and the direction of its expenditure. The essence of democracy lies, among other things, in this undisputed control over the purse that is exercised by the people through their chosen representatives. The real power of any legislature is to be measured by the degree of the monetary powers it enjoys. The English Parliament—or more correctly the House of Commons—is the sole authority for and the sole custodian of the finances of the Government of England. The executive can get only as much money as is voted by Parliament, and has to spend it on those purposes only for which it has been specifically voted. Finances are to the State what breath is to the body, and in responsible forms of government entire control over them is vested in the legislature.

3 Franchise and Electorates

MODERN DEMOCRACIES ARE REPRESENTATIVE. Democracies in modern days are representative. A direct democracy is a physical impossibility, apart from considerations of its advantages or disadvantages. In a representative government, the affairs of the State are

entrusted to a few people chosen by the citizens. In an ideal state of things, every citizen, unless positively disqualified, has the right of voting in the election of such persons. The smaller the number of disqualifications and the larger the number of persons who are authorized to give their vote, the more representative becomes the character of the Government.

The right of giving a vote is described, in political science, as the franchise. Persons to whom the right of franchise is given are described as the electorate or the constituency. The electorate is not identical with the total body of the citizens. It contains only those persons who are allowed to take part, indirectly, in the administration of the land.

DISQUALIFICATIONS : What sort of persons should be excluded from the enjoyment of this political privilege ? On the answer to this crucial question depends the degree of the democratic character of a democracy. Certain disqualifications are obvious. Children and young boys and girls are not, for instance, intellectually in a position to understand the problems of government and to exercise the franchise. Lunatics and madmen come in the same category. Criminal offenders who have been convicted by a court of law for crimes against society evidently cannot be permitted to have any share in the formation of the Government. The same viewpoint holds good in the case of bankrupts. Even in countries where there is universal franchise, these disqualifications are accepted as necessary and desirable.

ADULT SUFFRAGE Most of the representative Governments in the past had more restrictions than these on the exercise of the franchise. Women, for example, were disqualified on account of their sex even if they possessed the other necessary qualifications. Poor persons, labourers, and wage-earners were also regarded as unfit to possess the right of giving a vote. Ownership of a certain minimum amount of property or income has been an almost invariable qualification to entitle persons to have the vote. The trend of modern times is to reduce the amount to as low a figure as

possible so as to include in the electorate the largest number of citizens.

Some Western countries have abolished property qualifications altogether. They have conferred the right of vote on all citizens, men and women, who have reached a certain age, and who are not debarred otherwise, as for instance on grounds of lunacy, treason, or bankruptcy. Conditions in India may be different, but the Indian electorate is to be judged from the same point of view. The Nehru Report advocated the introduction of adult suffrage.

4 Electorates in India

It will be pertinent to describe here the different kinds of electorates that exist in India at the present day. They are mainly based on qualifications either of property or community or special interests. Residence is also an important factor.

GENERAL ELECTORATES A general electorate is one in which no account is taken of the race or community of the voter. The electoral law prescribes certain property and other qualifications, and all citizens who possess them are entitled to vote, irrespective of caste, creed and religion. Residence in a definite territorial area, which defines the geographical limits of the electorate, is of course essential.

NON-MOHAMMEDAN CONSTITUENCY In India, the nearest approach to a general electorate is found in the non-Mohammedan constituency. It consists of all enfranchised persons, other than Mohammedans, in any electoral area. It may thus be composed of Hindus, Parsees, Jews, Christians and others, all placed together in one group, provided they satisfy the conditions about the franchise.

COMMUNAL ELECTORATES The concept of a communal electorate is different. Here the very first condition which is essential to entitle a person to a vote is that he must belong to a particular community. Being a member of that community, he must further satisfy the conditions of the franchise as they may have been fixed

by the electoral law Persons not belonging to that community are entirely excluded from the electorate

In India, communal electorates have been conceded to the Mohammedans throughout the land, to the Sikhs in the Punjab and to the Europeans in important cities and plantations The voters who vote in these constituencies and the candidates who contest these seats must belong to the Mohammedan, Sikh and European communities respectively Others can neither vote nor stand for election in these electorates

MIXED ELECTORATES WITH RESERVED SEATS It is possible to devise an electorate which is a compromise between the general and communal principles and combines both of them That is known as the system of mixed electorates with reservation of seats for particular communities In such a system it is not necessary that the voters or electors should belong to a particular religion or race The electorate contains the names of all those who possess the requisite franchise, though they belong to different creeds and communities. But it is also laid down that out of the total number of seats which have to be filled by election a certain number must be held by members of a particular race

An illustration will make the point clear Suppose a territorial constituency has been assigned three seats in the legislature It may be prescribed that at least one of these three seats must be held by a Mussalman though the electors are composed of both Mussalmans and non-Mussalmans

It may happen that in the election the three candidates who poll the largest number of votes, in consecutive order, are all non-Mussalmans In that case the third candidate is not declared to be elected, but the Mussalman candidate who has obtained the largest number of votes, though he may stand much lower in rank in the numerical order, is declared successful

On the other hand, it may also happen that in the results of the election the first three candidates, who poll the largest number of votes in consecutive order, are all Mussalmans The election of every one of them

is, in that case, considered to be perfectly valid. In addition to the one seat reserved for them, they are thus enabled to capture the remaining ones.

In a communal electorate the candidate has to win the confidence of the members of his own community only. In a mixed electorate with reservation of seats, he has to look for votes even outside his community and endeavour to be popular with all.

In India, the privilege of reservation of seats for their own community was granted to the Maratha caste in the Bombay Deccan in elections to the Bombay Legislative Council by the Act of 1919, but was taken away by the Act of 1935. The Nehru Report advocated the extension of the same system throughout the whole country in place of the present communal electorates. A considerable body of enlightened public opinion also supports the same view in the interests of a consolidated Indian nationalism.

SPECIAL ELECTORATES Besides these types there is another type known as 'special constituencies'. These are intended to represent certain special interests in the country in their own right and independently. The landed aristocracy of the country, the industry, trade and commerce of the country, educational institutions like universities, are all special interests which have to be properly safeguarded and which are given special recognition as entities useful and beneficial to the state. They are therefore very often formed into constituencies by themselves. Such a constituency consists of all persons who are united by the tie of common interest, irrespective of community or race. They are thus different from communal constituencies.

In India several universities have been given the right of sending their own representatives to the legislature. Similarly, European Chambers of Commerce, Indian Merchants' Chambers and Bureaus, Millowners' Associations, Sardars and Inamdars have been created into constituencies by themselves. Every person, irrespective of community or religion, who is a recognized consti-

tuent of these bodies can vote in elections which are held for the return of their representatives

WHY COMMUNAL ELECTORATES WERE CREATED Communal electorates were introduced in India as the most convenient and satisfactory means which the British imperialist could devise for protecting the interests of minorities. One of the greatest dangers of democracy is that it may degenerate into a mere tyrannical rule of the majority over the minority and the suppression of the latter. This danger is likely to be aggravated in a country like India with its many races, religions, languages and conflicting historical traditions. Some effective safeguard was considered necessary under these circumstances. The Morley-Minto Reforms of 1909 therefore decreed that the Indian electorates should be divided into two parts—non-Mohammedan and Mohammedan—on the principle of religion. To such exclusive religious groups was given the right of sending representatives from among themselves to the legislatures. Weightage in representation was given to the minority community, that is the Muslims.

THEIR DANGEROUS EFFECTS That communal electorates have a tendency to emphasize and perpetuate the existing racial and religious differences, and to prevent the growth of a healthy nationalism, will be readily admitted by even a casual observer. By putting a premium upon communalty they positively discourage any tendency to a political fusion of the different communities, and engender a narrower and more selfish angle of vision. The communal and religious antagonism in India is attributed by many eminent Indians to the existence of communal electorates. However, communal electorates are an accomplished fact in Indian polity and it is extremely difficult to undo what has been done. They have acquired the strength of a vested interest. The minority is reluctant to part with a privilege which has been in its possession for many years. It will be a long time before the minority can be persuaded to accept other more scientific and less objectionable devices to protect its interests.

THE ELECTORAL ROLL All persons born in the state are not automatically given the right of voting even under the system of adult franchise. And when the latter is not in operation, certain property and other qualifications are prescribed by law to determine the right of voting. A list is made, for a specific territorial area, of all persons who possess those qualifications and are therefore entitled to exercise their vote. This list is called the electoral roll.

A preliminary and tentative edition of the electoral roll is published by the Government and kept open for public inspection for a stated period of time. It may happen that names of persons who, by their possession of the requisite qualifications are entitled to get a vote, have not been included in the electoral roll through oversight or mistake. Such omissions can be brought to the notice of the Collector or other authorized official and rectified by him. A revised and final edition of the electoral roll is then published and only the persons whose names are included therein are allowed to vote at the time of election.

5. The Bicameral System

THE UPPER HOUSE AND THE LOWER HOUSE In the bicameral system, the legislature is composed of two separate chambers. One of them is known as the Upper House or the Second Chamber, and the other is known as the Lower House or Chamber. The electorates of the two Houses are not the same. Their powers, functions and political status are not identical. They are formed to fulfil different purposes and embody different ideals.

The higher chamber is intended mainly to represent the vested interests and the wealth of the land. It consists of the members of the historical aristocracy, big landowners, wealthy merchants and other propertied persons. A sprinkling of a few intellectuals and public workers is also usually added to it. On the other hand, the lower chamber is more democratic in character. It is expected to contain the poorer element in the com-

munity and therefore the franchise for its election is deliberately kept low

THE LOWER HOUSE HAS LARGER POWERS Because the lower chamber is more representative and democratic in its structure it is usually invested with greater political power and control. It is considered only fair and natural that the body which reflects in a very great measure the nation's will should possess the dominant authority in the state. For this reason the English House of Commons is empowered to make and unmake the executive government in that country and to dictate to it.

THE UPPER CHAMBER IS INTENDED TO AMEND AND REVISE. The upper chamber represents only the privileged few who form the higher strata of society. Its members are not expected to be in the closest touch with the demos, or to give expression to its ambitions and sorrows. They are therefore precluded from exercising any effective control over money matters either on the income or on the expenditure side. Even in subjects other than finance the tendency of modern days is to look upon the second chamber as a brake and as a restraint on the impulsiveness of democracy. It is entrusted with the duty of amendment and revision. It is empowered to compel reconsideration of a measure which may have been passed by the lower chamber without due consideration. However, it is not intended that a body which represents only the aristocracy and the oligarchy of the land should be permitted to be a permanent hindrance to national progress as visualized by the large majority of citizens who are electors.

CONTROVERSY ABOUT THE NEED FOR A SECOND CHAMBER. Political thinkers are not agreed on the question as to whether two legislative chambers are necessary or desirable in a unitary state at all. There are not a few who hold the heterodox opinion that a second chamber is an unwanted superfluity and a nuisance. They feel that its existence involves an unnecessary reduplication of governmental work and consequently an enormous waste

of time, energy and money. In their opinion second chambers should be abolished.

ITS INTRODUCTION IN INDIA The framework of Indian polity has been unitary since the Regulating Act. Even the Montford Reforms did not make it federal. However the Act of 1919 introduced the bicameral system in the Central Legislature of India by the creation of the Legislative Assembly and the Council of State. It may be conceded for the sake of argument that the dangers of an upper chamber are not likely to become serious in a free nation. But its blind imitation in a subject country may prove perilous to national advance towards autonomy.

The Indian Government has not yet been made responsible to the Indian people. Conditions in this land are not therefore similar to those that obtain in a self-governing dominion or a sovereign state. In the psychological and material environment of a conquered race the existence of an oligarchical legislative house may prove ruinous to political progress. It may detract from the growth of national solidarity.

THE CENTRAL LEGISLATURE

1. Historical

PROGRESS UP TO 1919. The Regulating Act conferred upon the Governor-General and his Executive Council the power of making regulations or laws for the Company's dominions in India. The problems and requirements of a growing empire soon made it necessary to assign the work to a specialist, and a Law Member was appointed to the Executive Council in 1833. From 1861 a few non-official Indians came to be added to that Council when it sat for the purpose of making laws. Some of these members were allowed to be elected by the acts of 1892 and 1909, and the deliberative powers of the Councils were increased to a certain extent. In those days of course there was no question of the executive being put under the control of the legislature.

AFTER THE ACT OF 1919. The Montford Reforms were supposed to be the first instalment of self-government promised to India by the Announcement of August 1917. The constitution and status of the legislatures as proposed by them had a faint and shadowy background of political responsibility. For the first time in Indian constitutional history, a bicameral system was introduced. The old Supreme Legislative Council was replaced by two bodies, the Council of State and the Legislative Assembly. A large elective element was introduced in them and they were granted more importance and powers than their predecessors had enjoyed.

The Montagu-Chelmsford Reforms have now been superseded by the Act of 1935. If and when, in accordance with the provisions of that Act, the Federation of India comes to be established, the central legislature will be constituted on entirely different lines. However, till the time that portion of the Act becomes operative, the central legislative chambers as they have existed since

the Act of 1919 will continue to function Their constitution, powers, procedure, etc., during the transitional period have been defined in the Ninth Schedule of the Act of 1935 A detailed account of the two chambers as they exist today is given in the following sections

2. The Council of State

CONSTITUTION The Council of State in India corresponds to the upper chambers of other countries The total number of its members is 60 Out of these, 33 are elected by various constituencies and 27 are nominated by the Government Of the nominated members, not more than 20 are to be officials.

The Council of State is a part of the central legislature and its electorate is comprised within the territorial limits of the whole of British India Elections are not however held on a general ticket throughout the area The existing political divisions are taken as units, and seats are assigned to them approximately in proportion to their population, to their territorial extent and so on The total elected number of thirty-three is thus distributed among the various provinces which are taken as electoral units A similar distribution of nominated seats also takes place

FRANCHISE The great diversity of political and economic conditions in the various provinces makes a uniform franchise for a chamber of the central legislature almost an impossibility The franchise for the Council of State therefore is different in the different provinces The variation is, of course, intended only to equalize the conditions of the franchise as far as possible by taking into account the particular economic or political situation of each province and correcting and modifying the franchise in the light of those conditions. This body is intended to serve the purpose of an upper and revising chamber and therefore to consist of persons who have large vested interests in the land They are expected to be conservative enough to counter-balance the radical freaks of a demos The qualifications are therefore so contrived as to ensure that the

majority of the members will belong to the richest strata of society, a small number being allowed for intellectuals

In the Province of Bombay (i) persons who pay income-tax on an annual income of not less than Rs 30,000, (ii) persons who are owners of land, the land revenue dues of which are not less than Rs 2,000 per year, (iii) persons who are Sardars or Talukdars or Dumaldars or Inamdars and recognized as such by the Government, are entitled to have a vote. The object and the effect of this high franchise are clear. It excludes anyone who is not very wealthy or who is not a scion of an aristocratic family. The intellectual element is supplied by the further provisions that (iv) all persons who have been once President or Vice-President of a Municipality, (v) President or Vice-President of a District Local Board, (vi) persons who have been members of the Senate or fellows of a University, (vii) persons who have been members of any legislative body in India, (viii) persons who enjoy the title of Mahamahopadhyaya or Shams-ul-Ulema, have also a right to vote. These provisions have made it possible for comparatively poor persons to contest the seats of the Council if they have to their credit some public work and influence as demonstrated by their possessing any of these qualifications.

In the elections of 1925 the total electorate for the Council of State numbered 32,126, of which Burma contributed no less than 15,555. If representatives from Burma are excluded, the remaining thirty-two members of the Council of State were elected by only 17,000 voters spread over the whole of British India. This position has not appreciably changed in the subsequent election which was held in 1930.

IT IS AN OLIGARCHICAL BODY. With the exception of this small intellectual and to a certain extent democratic element, the Council of State has a predominantly oligarchical character. It therefore possesses all the characteristics that are the distinguishing features of oligarchy. It is conservative in its formation. It is suspicious of progress. Its outlook is generally narrow.

Representing as it does the vested interests in the state, it is inclined to be self-centred and self-protecting. Not being returned by an extensive electorate it has a tendency to be exclusive in its outlook and to be unaffected by the currents of popular opinion. The small elected majority of five is not calculated to lessen the consequences of the oligarchical nature of the body. The tenure of the Council of State is five years.

PRESIDENT For any legislature the position and status of the President are matters of important consideration and privilege. In the case of the old Supreme Legislative Council, the Governor-General was the *ex officio* president. In the new dispensation of the Montford Reforms this privilege was taken away from the Governor-General. The President of the Council of State is now nominated by the Governor-General, and till 1932 he was invariably an official. Thereafter, however, a non-official has been selected to hold that office. The Council of State is denied the privilege of electing its own President, a privilege which is enjoyed by the Legislative Assembly.

FUNCTIONS AND POWERS **I LEGISLATIVE** A reference has already been made to the different kinds of powers which a legislative chamber can possess¹. The Council of State has been given full legislative powers. Every Bill which has to be passed into an Act must receive its assent. Any member, official or non-official, may introduce a Bill for the consideration of the House, which may or may not pass it. No measure can be incorporated into the law of the land unless the Council of State has given its sanction to it. It enjoys in this respect the same powers as are enjoyed by the Legislative Assembly.

II ADMINISTRATIVE It can exercise control over the administration by moving resolutions or adjournments or votes of censure, or by putting questions and supplementary questions. Fifteen days' notice is required for a resolution. The Governor-General can disallow any resolution if he feels it necessary to do so in

¹ See pp 86-89

the public interest. Motions for adjournment must refer to definite matters of urgent public importance and of recent occurrence. Questions and supplementary questions to elicit information on points in the routine of administration can be put by members to the executive officials. On matters affecting the relations of the Government with foreign States or Indian Princes or on those matters which are *sub judice*, no questions can be asked and no resolutions can be moved. The president can disallow a question or supplementary question. He can also disallow a motion for adjournment.

III FINANCIAL. Lastly, the financial powers of the Council of State have to be understood. The Council of State is avowedly a body of elders, oligarchical in character and serving as an upper chamber. It has only a remote acquaintance with popular sentiments and desires. The second chambers in Western countries have not the same thorough control over the nation's purse as the lower chambers possess. They are regarded as inherently unfitted to exercise this power because of their vested interests, because of their narrow representative character and because of the general conservative outlook, that pervades all their thoughts and acts. The House of Lords in England, for instance, cannot initiate any money bill, and after the legislation of 1911 cannot claim equal rights with the lower chamber in financial affairs, it has been disarmed of the privilege of persistently opposing and obstructing the passage of the Finance Bill after it has been passed more than once by the lower body, the Commons.

Following this sound constitutional precedent, the Indian upper chamber is denied certain privileges in financial matters which are granted to the lower chamber. The budget is to be presented to both bodies on the same day. Both of them can discuss it thoroughly, but the voting of particular grants demanded by the heads of various departments is a special duty and privilege of the Assembly. These are not submitted to the Council of State after they have been voted upon by the Assembly. The latter body is in this respect

supreme, subject to the certifying veto of the Governor-General.

After the voting of grants, ways and means of revenue have to be considered. Money has to be found for the expenditure that is voted, and all proposals for taxation are embodied in a Bill known as the Finance Bill. This Bill has to be passed by the Assembly and is then sent up to the Council of State for its assent like any other legislative Bill. The Council may pass the Bill as it is or introduce amendments, which must be acceptable to the originating chamber. In a deadlock the Governor-General's extraordinary powers can be exercised for preserving the proper conduct of the administration.

The Council of State's financial powers are therefore as follows. The budget is presented to it at the same time as to the Assembly. It has the right to hold a general discussion on the budget and generally on the financial policy of the state. Its legislative powers being co-ordinate with those of the Assembly, the Finance Bill, which contains all proposals of taxation, has to be submitted for its assent and can be modified or even rejected by it. The power which the Council of State does *not* possess is that of voting supplies or grants, demands for which are made by the heads of the various departments separately. That is the exclusive privilege of the Assembly.

FREEDOM OF SPEECH Subject to the rules and standing orders, there is freedom of speech for members in the Council of State. No person is liable to any proceedings in any court by reason of his speech or vote in the Chamber.

CRITICISM OF THE COUNCIL OF STATE The experience of the working of the Council during the last two decades and more has revealed the usual antagonism and cleavage between the view-points of a democratic chamber and those of an oligarchical house. A cent per cent increase in the salt-tax, which was proposed in the budget by the Finance Member and which was vehemently opposed by the Legislative Assembly, was approved of by the Council of State. Nor could the Assembly's

STATEMENT SHOWING THE COMPOSITION OF THE COUNCIL OF STATE
AS IT STOOD WHEN THE SIMON COMMISSION REPORTED¹

Constituency	Nominated		Elected					Total
	Officials	Non officials	Non-Moham- medan	Moham- medan	Sikh	Non- communal	European commerce	
Government of India ..	11 ²		.					11
Madras	1	1	4	1				7
Bombay	1	1	3	2			1	8
Bengal	1	1	3	2			1	8
United Provinces	1	1	3	2	.		.	7
Punjab	1	3	1	2 ⁴	1	.		8
Bihar and Orissa	1		2 ⁴	1				4
C P and Berar		2 ³				1	..	3
Assam			.	1	.			1
Burma		.		.	.	1	1	2
N W F Province		1				. ⁵	. ⁵	1
Total .	17	10	16	11	1	2	3	60

antagonism to the Princes' Protection Bill find any support in the Council of State. In fact, a constitutional crisis in the real sense of the word has not yet occurred at all. On crucial occasions of conflict between the democratic Assembly and the bureaucratic Government, the oligarchical Council of State has till now invariably thrown itself on the side of the Government.

Even in free countries, a congregation of vested interests is always nervous of the progressive democratic impulse, and is opposed to it. In a conquered country

¹ Report, vol I, p 167

² Including the president

³ One of these is nominated as the result of an election held in Berar

⁴ At alternate general elections there are three non-Mohammedan seats for Bihar and Orissa and only one Mohammedan seat for the Punjab

⁵ The distribution of nominated seats may be varied at the discretion of the Governor-General but the officials cannot exceed twenty

like India the instinct of self-preservation is immensely strengthened and naturally induces intense caution on the part of the aristocratic class. Critics of the Council of State have every reason to deprecate the formation and constitution of a body which is inevitably drawn into an alliance with the bureaucracy as against the declared wishes of the popular chamber.

3. The Legislative Assembly

CONSTITUTION The lower and more democratic chamber in the Indian legislature is known as the Indian Legislative Assembly. This body consists of a total of 144 members of which 103 are elected and 41 nominated. Of the latter not more than 25 are to be officials. It is thus evident that both in its size and in the larger proportion of elected to nominated members the Assembly is distinguished from the Council of State. The total number of its members is distributed among the various provinces according to their population and importance. The existing political divisions of the territory of India are accepted as the units for its election, and as it is a body larger and more democratic than the Council of State and possesses a wider electorate, the political sub-divisions of the province are further taken as units for the distribution of seats and for election, unlike the Council of State for which, in the non-Mohammedan constituency, the province as a whole is the unit. Thus the number of elected members representing the province of Bombay in the Assembly is 16 out of its elected total of 103. These are elected from constituencies, the territorial extent of which corresponds to the Commissioners' Divisions, or, in the urban constituency of the City of Bombay, to the extent of the city.

FRANCHISE There cannot be a uniform franchise for the Assembly throughout India. It varies in the different provinces according to local conditions, an attempt being made to establish similar real conditions in all the provinces. In the province of Bombay, (1) all persons who pay income-tax, (2) all persons who pay

an annual land revenue not less than Rs. 37-8 in the Upper Sind Frontier, Panch Mahals and Ratnagiri Districts and not less than Rs 75 in the rest of the province, have been given the franchise for the Assembly. It will be seen that this franchise is much wider than that for the Council of State and narrower than that for the Bombay Legislative Council as prescribed by the Montford Reforms. Members possessing a wider outlook, and elected from a wider electorate, are required to discuss all-India questions, yet the franchise cannot be too high if a largely democratic and representative character is to be maintained. The Assembly must combine in itself the characteristics of being a well-proportioned all-India body, and also a predominantly democratic body, unlike the oligarchical Council of State.

The total electorate for the Legislative Assembly numbered 1,415,892 at the time of the last elections which were held in the autumn of 1934. Thus its 105 members were returned by less than fifteen lakhs of voters in British India, the total population of which was then nearly twenty-five crores. There has been very little change in this position since then. The tenure of the Legislative Assembly is three years.

PRESIDENT It was provided in the Act that the first President of the Assembly would be a non-official member of Parliamentary experience nominated by the Governor-General to hold office for the first four years. As has been stated already, the President of the Indian legislature before the Montford Reforms was the Governor-General *ex officio*. The President of the Council of State is a nominated member, and was an official till 1932. The Assembly has been given the privilege of electing its own President from amongst its members since the Montford Reforms. On the expiration of the first four years, during which the affairs of the Assembly were to be guided by an experienced and well-informed Parliamentarian and during which conventions and traditions could be set up by him, the right of election was to be exercised

and thenceforth the chair of the President was to be adorned by one on whom the choice of the Assembly fell. Sir F. Whyte was the first nominated President. Mr Vithalbhai J. Patel was the first elected President and he was re-elected for a second term of office.

IMPORTANCE OF THE OFFICE OF PRESIDENT The election of its own Speaker has been an important and time-honoured privilege of the House of Commons. The historical evolution of this office is interesting. From being the spokesman and leader of his colleagues and a channel of communication between them and the monarch, the Speaker has now come to be a non-party dignitary vested with all the intricate functions and powers that are necessary to guide the deliberations of a democratic legislative chamber. Constitutionally, the Speaker's or President's position carries great responsibilities with it. He presides over the meetings of the body and can adjourn them. He maintains order at the time of discussion, gives his rulings on disputed points of procedure, and has to dispose systematically of the business on the agenda. He maintains the dignity of the House by controlling members in the use of their language, he has to protect carefully the privileges of the House from any outside encroachment. He admits questions and grants permission to move adjournments. In case of an equality of votes the President can give a casting vote. In short, to have its own elected President is one of the most cherished and one of the most useful privileges enjoyed by a legislature.

That privilege was conceded to the Legislative Assembly by the Act of 1919. A Deputy-President is elected to preside in the absence of the President. The salaries of both the President and Deputy-President are voted by the Assembly. Both cease to hold office when they cease to be members of the Assembly and may be removed from office by a vote of the Assembly and with the concurrence of the Governor-General.

POWERS AND FUNCTIONS LEGISLATIVE AND ADMINISTRATIVE The powers and functions of the Assembly are to be considered in the light of the classification

that has been given already¹ The legislative powers of this body are co-ordinate with the powers of the Council of State No Bill can be deemed to have been passed into an Act having force of legality unless it is passed by both bodies and has received the Governor-General's assent All legislation must therefore pass through the Assembly, which can also move resolutions, votes of censure, and motions of adjournment, any of its members can put questions and supplementary questions in the same manner as the members of the Council of State It can thus effectively establish its supervising authority and critical control over departmental administration and indicate its political predilections

FINANCIAL POWERS The Assembly has, however, a wider power in the domain of finance than that possessed by the Council of State The budget has of course to be presented to this body by the Finance Member as he used to submit it to its predecessor before 1919 It can also carry on a general discussion of the budget and of the financial policy of the Government, as before But now it does not stop with moving resolutions and dividing the Council on them, as it did between 1909 and the introduction of the Reforms of 1919 For the first time in Indian constitutional history, power was given to the legislature to vote the grants demanded in the budget This has to be clearly understood

BEFORE THE MONTFORD REFORMS The position after 1909 was peculiar In the first place, the Supreme Legislative Council contained a clear official majority, so that any amounts of money that the Government wanted could be easily secured by their issuing an executive mandate concerning the manner in which official members should vote And even if an official majority had not existed, matters would not have been much better, for the power that was conceded to the legislature in regard to the budget amounted only to the liberty of expressing an opinion on a particular

¹ See pp 86-89

item if allowed to do so. This expression of opinion through the medium of resolutions was not binding upon the Government. It had not the authority of law.

AFTER THE MONTFORD REFORMS. On the other hand, the power of voting supplies, partially granted under the Montford Reforms, is a different thing. It has been already explained that complete control over the country's finance is one of the essential conditions of parliamentary government. It has not been introduced in the central administration of India. Yet an endeavour is made to create some shadow of parliamentary government by conceding to the legislature the privilege of voting a part of the total supplies required by the Government of India. The money required for certain items cannot be spent unless it is voted by the Assembly or is permitted to be spent by the certification of the Governor-General.

NON-VOTABLE ITEMS. The proposals of the Government for the appropriation of revenues and moneys are divided into two parts, votable and non-votable. Grants coming under the latter head, are not put for the Assembly's vote, nor can they be discussed by the legislature unless the Governor-General permits. Some very important subjects are included in this group. Interest and sinking fund charges, salaries and pensions of persons appointed with the approval of His Majesty or the Secretary of State, salaries of Chief Commissioners, expenditure under the heads ecclesiastical, external affairs, defence, and tribal areas, also expenditure on matters in which the Governor-General is required to act in his discretion by the Act of 1935, and expenditure charged on the revenues of the Federation, are all non-votable subjects. They cover about eighty-five per cent of the total expenditure.

VOTABLE ITEMS. Proposals for the appropriation of revenues in subjects other than these specified ones are submitted to the vote of the Assembly in the form of demands for grants. The Assembly may assent to or reduce or refuse a grant. Grants that have been thus reduced or rejected cannot be obtained unless the

Governor-General feels that they are absolutely necessary for the discharge of his responsibilities towards Parliament and so restores them by his power of certification. The Joint Parliamentary Committee made it clear that the power of certification was intended to be real, inasmuch as voting of the budget was not accompanied by any degree of political responsibility and the Governor-General-in-Council continued to be solely responsible to Parliament for peace, order and good government in India.

With the creation of an Assembly containing a large elected non-official majority and possessing a reasonably representative character because of its election on a democratic franchise, and with the partial grant to this body of the power of voting supplies demanded by Government officials, it is no wonder that the centre of political importance in the constitution of India has now definitely shifted to the Indian Legislative Assembly. The Council of State does not enjoy the privilege of voting grants. It can only approve of and discuss the Finance Bill.

FINANCE COMMITTEE—Besides, the Assembly has power to appoint a standing Finance Committee, (i) to scrutinize proposals for new votable expenditure, (ii) to sanction allotments out of lump sum grants, (iii) to suggest retrenchment and economy in expenditure and (iv) generally to assist the Finance Department by advising on such cases as may be referred to it. The Committee consists of ten members elected by the Assembly with a chairman nominated by the Governor-General.

COMMITTEE ON PUBLIC ACCOUNTS At the commencement of each financial year there is also constituted a Committee on Public Accounts, consisting of not more than twelve members of whom not less than two-thirds are elected by the non-official members of the Assembly. The Finance Member is the chairman, and has a casting vote in case of an equality of votes. The Committee has to scrutinize the audit and appropriation accounts of the Governor-General-in-Council and satisfy

itself that the money voted by the Assembly has been spent within the scope of the demand granted by the Assembly. It has also to bring to the notice of the Assembly every reappropriation from one grant to another, every reappropriation within a grant, and all such expenditure as is desired by the Finance Department to be brought to the notice of the Assembly.

FREEDOM OF SPEECH As in the Council of State, members of the Assembly have freedom of speech on the floor of the house, subject to rules and standing orders. They are not liable to any proceedings in any court by reason of speech or vote in the chamber.

4. Procedure of Work in the Central Legislature

Summons for meetings—The time and place for the meeting of the central legislature are fixed by the Governor-General. A summons to attend the session is issued to each member by the Secretary of the legislative chamber.

Oath and President's election—If a legislature is meeting for the first time after new elections, its members are first of all called upon to take the Oath. Immediately thereafter they proceed to elect their President and then their Vice-President. Both these elections are not finally valid until they have been approved of by the Governor-General.

At the commencement of each session the President must nominate from among the members a panel of not more than four chairmen.

In the absence of the President, the Vice-President presides. If both are absent they can request any one of the panel of chairmen to preside over the meeting.

Allotment of days for business—The Governor-General allots definite days for the transaction of non-official business. On other days only official business can be transacted unless the Government otherwise directs.

A list of business, or agenda, is dispatched to each member before the commencement of the session.

Quorum—Twenty-five members form the quorum for a meeting of the Legislative Assembly and fifteen members for that of the Council of State.

Questions—The first hour of each meeting is devoted to the answering of questions. The number of questions which a particular member may ask on any day is limited to five. For each question not less than ten clear days' notice is required ordinarily. In special circumstances, however, short-notice questions may be allowed. The President has power to disallow a question if in his opinion it constitutes an abuse of the member's right.

Any member may put a supplementary question for the purpose of elucidating any matter of fact regarding which an answer has been given. But such questions can be disallowed by the President.

Resolutions—A member who wishes to move a resolution must ordinarily give fifteen clear days' notice. The resolution must pertain to a subject of general public interest and may be disallowed by the Governor-General. Amendments can be moved by any member to a resolution. Non-official resolutions can be taken only on days allotted for non-official business. Their order of priority is determined by ballot.

Adjournment motions—Leave to propose an adjournment motion for the purpose of discussing a definite matter of urgent public importance must be asked immediately after questions have been answered. If more than thirty members rise in support, the President intimates that the matter will be taken up for discussion at 4 o'clock in the afternoon. The debate must terminate at 6 o'clock and thereafter no question in respect of that motion shall be put.

Legislation—Generally, a month's notice is required for leave to introduce a Bill. Every Bill is required to pass through the following stages.

(1) A member who wants to move a Bill must first seek leave of the Chamber to introduce it. In doing so he may make a brief explanatory statement. An opposing member is also allowed to make a few

remarks to explain his position. Then without further debate the question is put and if the majority of members are in favour of leave being granted, the mover forthwith introduces the Bill.

However, the Governor-General may order the publication of a Bill in the *Gazette* although no motion has been made for leave to introduce it. In that case such a motion is not necessary and if the Bill is afterwards introduced it is not necessary to publish it again.

(ii) After a Bill has been introduced it is published in the *Government Gazette*.

(iii) After a Bill has been introduced and published, the member in charge moves that the Bill be read for the first time. Only the general principles are discussed on this occasion. Discussion on details is not permitted.

(iv) After the first reading is passed, any one of the following motions may be made:

(a) that the Bill be read a second time,

(b) that the Bill be referred to a Select Committee; and

(c) that the Bill be circulated for eliciting public opinion.

If (c) is accepted, the Bill may be referred to a Select Committee after public opinion has been elicited.

The Select Committee may hear the necessary evidence and usually has to submit its report, with dissenting minutes, if any, within two months. The report and the minutes are published in the *Gazette* and also circulated among members. The report is then presented to the legislature by the member in charge of the Bill with a brief explanatory speech.

(v) After the Select Committee's report is presented, the mover proposes that the Bill be read a second time. If this motion is agreed to by the majority, the President has to submit the Bill clause by clause separately to the vote. Any member can move an amendment to any clause with seven clear days' notice. Votes are first taken on the amendments and then on the clauses as they originally stood or as they have been amended.

(vi) After the second reading is finished the mover proposes that the Bill be read for the third time. Only verbal amendments are allowed on this occasion and no notice is required for them.

Every Bill is required to be passed three times in three readings as described above.

A Bill passed by one chamber must be sent to the other chamber and there it has to pass through the same procedure.

After the Bill has been passed by both the chambers it goes to the Governor-General for his assent. Only after that assent is given does the Bill finally become law, when it is called an Act.

Budget.—The budget has to pass through the following stages :

(i) It must be presented to the legislature on such day as the Governor-General appoints. A copy of it along with detailed estimates must be dispatched to each member at least seven days prior to the first of the days allotted for the general discussion of the budget.

No discussion of the budget can take place on the day on which it is presented.

(ii) After the budget is presented, the legislative body is at liberty to discuss the budget as a whole. The Governor-General allots a definite number of days for this purpose. This is the opportunity for members to criticize the general scheme and policy of the Government and the main principles of administration. No motion is allowed at this stage and details are generally excluded from the discussion. The Finance Member has a general right of reply at the end.

(iii) After general discussion, the voting of demands for grants is undertaken. Not more than fifteen days are allotted for this purpose and not more than two can be taken up by the discussion of any one demand.

On the last of the days allotted for the voting of grants, the President must stop all discussion at 5 o'clock in the evening and forthwith put every outstanding demand to the vote of the chamber.

PRINCIPAL ITEMS IN THE REVENUE AND EXPENDITURE OF THE GOVERNMENT OF INDIA
BUDGET ESTIMATES FOR 1938-39 IN THOUSANDS OF RUPEES

Revenue	Expenditure
Customs	43,81,00
Central Excise duties	7,76,00
Corporation tax	1,55,00
Income tax	12,42,34
Salt	8,35,00
Opium	44,92
Other heads	1,06,57
Railways—net receipts	32,57,41
Irrigation—net receipts	1,02
Posts and telegraphs—net receipts	74,61
Debt services	66,33
Civil administration	99,99
Currency and Mint	66,94
Civil works	30,90
Miscellaneous	1,54,86
Defence services	5,59,69
Extraordinary items	3,75,14
Total	1,22,27,72
	Direct demands on revenue
	Capital outlay on salt works
	Railways—interest and miscellaneous
	Irrigation
	Posts and telegraphs
	Debt services
	Civil administration
	Currency and Mint
	Miscellaneous
	Defence services
	Adjustments between Central and Provincial Governments
	Extraordinary items
	Total
	1,22,18,47

4,33,35
98
30,01,75
10,78
80,48
14,62,32
11,31,18
37,43
3,63,45
50,77,69
3,04,82
1,88

A separate demand for grant is ordinarily made for each Government Department.

The legislature can reduce or omit but not increase the amount demanded in a grant.

5. Conflicts between the two Chambers

CO-ORDINATE LEGISLATIVE POWERS OF THE CHAMBERS
The Assembly and the Council of State have equal status and almost equal powers. No Bill can become law unless it is assented to by both the chambers. If an uncompromising difference arises between them on any Bill, clause or amendment, the Bill, clause or amendment has either to be dropped or some method has to be provided for ending the dispute. Such conflicts have taken place in all bicameral systems of legislature, and solutions for the consequent deadlock have also been provided. The monarch's unrestricted right of creating as many peers as he likes has proved to be the safety-valve of the English constitution on more than one occasion, though the Parliament Act of 1911 has made resort to this power unnecessary. Special clauses were included in the Government of India Act of 1919 to end differences between the Indian legislative chambers when they arise, and they have been incorporated in the Ninth Schedule of the Act of 1935.

DIFFERENCES BETWEEN THE CHAMBERS AND REMEDIES TO END THEM After a Bill has been passed by either of the chambers it is sent to the other chamber for its assent, without which the Bill cannot become an Act. If the other chamber accepts the Bill without modification, there is no hitch. If it introduces any amendment, then the Bill is sent back to the originating chamber with the amendment. If the amendment is acceptable to the originating chamber, matters pass off smoothly. The real conflict arises on occasions when a Bill passed by one chamber is totally rejected by the other or is so altered by it as to prove unacceptable to the first chamber. Various methods are provided to avert the conflict or to end it when it comes. For example :

(i) **JOINT SELECT COMMITTEE.** When a Bill is introduced in either chamber and before it is referred to a Select Committee of the house in the second reading, the originating chamber may request, by a resolution, the other chamber to nominate some of its members to the Select Committee, so that while the Bill is on the anvil and under the searching consideration of the Committee, members of the other chamber can take part in the discussion and give expression to their views so as to enable the Bill to be modified in the light of their opinion. In this way future opposition may be anticipated and a probable conflict may be averted if the motion to appoint a Joint Committee is accepted by both Houses.

On such a Joint Select Committee an equal number of members from both the houses will sit, its chairman will be elected by itself and will have only one vote, and in case the votes are equal, the question will be decided in the negative. The time and place of the meeting will be fixed by the President of the Council of State.

(ii) **JOINT CONFERENCE.** When there is a difference of opinion between the chambers, they may agree to a Joint Conference where each chamber will be represented by an equal number of members. The procedure of the Conference will be determined by itself. The time and place of its meeting will be fixed by the President of the Council. An amicable settlement may be arrived at as a result of the discussions in the Conference and the deadlock may be ended.

(iii) **JOINT SITTING.** As a last resort, if the chambers are in a state of pronounced mutual disagreement, when a Bill as passed by the one is not approved of by the other and when the latter's amendments and alterations are not acceptable to the originating chamber, this last body may report the fact of the disagreement to the Governor-General or allow the Bill to lapse. In case intimation of the difference is given to the Governor-General, he may convene a Joint Sitting of both the chambers by notification in the *Gazette*. The President of the Council of State shall preside and its procedure

shall apply. The members present at a Joint Sitting 'may deliberate and shall vote together upon the Bill as last proposed by the originating chamber and on the amendments in dispute'. The majority of the votes of the total number of members present shall prevail and the Bill as passed by the majority, with whatever amendments may have been accepted, will be taken as if it had been duly passed by both the chambers. It is plain that in a Joint Sitting the Assembly will naturally be at an advantage on account of its larger numbers.

CERTIFICATION A slightly complicated state of things arises in connexion with the question of conflict when, in addition to the will of the chambers, a third force, the will of the Governor-General, comes into operation. In the cases above discussed the Governor-General was taken to be an impartial disinterested spectator. But occasions may arise—they have arisen frequently—when in the conflict of opinion between the two chambers the Governor-General may take a keen interest and may cast in the weight of his authority on one side. He can then end the conflict by the use of the extraordinary constitutional weapons that are provided for him. The expedient of a Joint Sitting is useless for his purposes if his difference is with the Assembly, as that body would command in the Joint Sitting a majority of votes. When, therefore, the disagreement between the chambers is complicated by the disagreement of the Governor-General with either of them, it has happened in practice that the process of certification has been utilized for the removal of such a deadlock.

A concrete case will illustrate the point. The Princes' Protection Bill and the clause doubling the salt-tax in the Finance Bill of 1924 were disallowed by the Legislative Assembly. The Governor-General was interested in the passing of these measures. They were therefore sent up to the Council of State with the Governor-General's recommendation about the form in which they should be passed and were passed by that body. Thus there arose occasions of conflict between the Assembly and the Council, with the Governor-General interested

in getting particular measures passed, in spite of the opposition of the Assembly. When the Bills as passed by the Council of State were not accepted by the Assembly, the Governor-General exercised his certifying power, gave his assent to them and the measures were taken to be legally passed. Apart from the usual constitutional provision of a Joint Select Committee or a Joint Conference or a Joint Sitting, the Governor-General's extraordinary executive authority has thus indirectly tended to serve the same purpose on certain occasions, when the Governor-General himself has espoused a particular cause.

THE RELATION OF THE EXECUTIVE TO THE LEGISLATURE

1. No Principle of Responsibility

THE EXECUTIVE OUGHT TO BE SUBORDINATE It has been explained already how a proper understanding of the relation between the executive and legislative parts of a country's administration is indispensable for estimating the reality of its democratic character In a country like England with parliamentary institutions, the subordination of the executive to the legislature is complete And as the final goal of British policy in India has been announced to be the progressive realization of responsible government and the development of parliamentary institutions, when the goal is achieved in practice the subordination of the Indian executive to the Indian legislature will also be complete An attempt has to be made to view in a proper perspective the relations between the two parts as they exist in the present avowedly transitional period

THE POSITION BEFORE THE MONTFORD REFORMS No consideration could of course be given to this problem before the completion of the Indian conquest and the settling down of its administration into peaceful routine In the beginning of British rule, legislatures as separate bodies did not exist at all And when they were introduced and as they were progressively developed during the latter portion of the nineteenth century, gradual additions were made to their powers But the irresponsible character of the executive administration was maintained Even at the time of the Councils Act of 1909 the intention of even indirectly initiating something akin to parliamentary government was expressly disowned There was no question of the executive being controlled by the legislature The enlargement of the Councils was simply due to a desire for the greater asso-

ciation of Indians in the administration. The bureaucracy was responsible only to itself and in the last resort to the distant Secretary of State and the uninterested British Parliament.

THE POSITION THEREAFTER The Act of 1919 introduced many important changes in other directions, but so far as the strictly legal position is concerned, it left unchanged the old relations between the executive and legislative parts of government. Even after the Act of 1935, the same position will be maintained as long as the Transitional Provisions and the Ninth Schedule are in operation and the Federation of India is not introduced.

In strict theory, the Governor-General-in-Council continues to be as autocratic as he was before. Neither he nor his colleagues are called upon to resign even after a regular vote of censure is passed upon them by the legislature. Their salaries and rules of service are beyond the reach of the people's representatives. They are not bound to accept any recommendation made to them by the legislature. Their responsibility is only to the British Parliament and they hold office during the pleasure of the Sovereign. The extraordinary legislative veto that is now given to the Governor-General, otherwise known as the power of certification, is intended to act as a corrective to any persistent obstruction on the part of the legislature. In short, the citadel of bureaucratic authority, so far as the Central Government in India is concerned, continues to be as strongly fortified as before, according to the strict letter of the Constitution.

2. Indirect Influence of the Legislature

THE NEW STATUS AND POWERS OF THE LEGISLATURE This is, however, a purely theoretical position. Matters differ somewhat in practice, particularly since the Act of 1919. With legislatures enlarged and to a certain extent democratized, with an elected non-official majority created in them, with larger financial and deliberative powers conceded to them, and with the Viceroy's power of certification declared to be extraordinary, the indirect but none the less real influence of popular

opinion as expressed in the legislature may not be entirely insignificant. The legislature cannot dismiss executive members but can certainly dismiss requests made by them for various grants necessary to keep some of the smaller wheels of the machinery going. The refusal of such requests and the rejection or reduction of any of the demanded grants may indeed provoke a Viceregal resort to the extraordinary weapon of certification. That power may also be invoked for any other similarly rejected legislative measure. But unless certification ceases to be regarded and used as an extraordinary weapon, administration by certification will be regarded as uncommon and abnormal.

IMPORTANCE OF PUBLIC OPINION Public opinion as focussed through representative legislative chambers carries a peculiar weight with it. It is the most disciplined and chastened expression of a self-conscious public will. To disregard a mobilized and concentrated force of this type would prove nothing less than suicidal to any normal government. No government with a human, moral basis and composition can be supported on props which press down those very moral and human elements that are the essence of its vitality. Legally, the Government of India are entirely independent of their legislature. In practice, on the other hand, they have to be thin-skinned enough to be susceptible to popular opinion and to try to abide by its wish, at least to a certain extent. Sir Malcolm Hailey, speaking in the Legislative Assembly after the introduction of the Montford Reforms, was giving a description of the actual state of affairs when he described the Government of India as having become, after the Reforms, responsive if not responsible to popular opinion, and its actions as having become indicative if not reflective of the popular viewpoint.

INFLUENCE OF PUBLICITY An incessant use of the privilege of interpellation, of the power of moving resolutions and adjournments, of discussing the budget and voting a part of it, and of the power of sanctioning all legislative measures; in short, an incessant use of the

searchlight of publicity and critical investigation, is believed to go a long way in the direction of strengthening the hands of the legislature and making it the centre of political influence. The executive government has to gravitate towards this centre, perceptibly or imperceptibly. The elastic adjustment of its actions to accord with the surrounding political atmosphere may be dissembled by the garb of diplomacy, yet a consolidated, sober and responsible popular will is a force which can only be disregarded on occasions of the utmost gravity when an administrative breakdown appears inevitable.

UNCERTAIN NATURE OF INDIRECT CONTROL The degree of the indirect influence of the legislature upon the actions of the executive cannot be exactly estimated or evaluated. The Montagu-Chelmsford Report stated that such influence was very real. It may be that on some occasions the popular view as expressed in the legislature is respected and action taken in accordance with it. After the Montford Reforms, the legislatures have ceased to be mock bodies, they have a good deal of representative character and somewhat larger powers. And, therefore, unless either the executive Government has become an un-human and lifeless machine, a mere abstraction of power and efficiency, or unless extraordinary vetoes like certification are domesticated into the normality of executive powers, the influence of the legislature over the executive cannot be ignored.

The experience of recent years does not justify any strong hope about the practical success of such an indirect constitutional restraint. On more than one occasion, the views of the Assembly have been disregarded. Proposals vetoed by it have been restored. Grants refused by it have been reinstated. Resolutions passed by it have been neglected. The precarious nature of a power which is allowed only on sufferance and the existence of which is made dependent upon the frailty of a generous caprice has been amply demonstrated during the last few years. Indian public opinion demands the subordination of the executive to the legislature as a matter exercised as of right and not merely allowed

as an ambiguous privilege And even if the quality and the reality of the legislature's indirect influence be asserted and proved to be great, the fact of its uncertainty and its allowance by mere courtesy detract to a great extent from its utility and value

COMPOSITION OF THE LEGISLATIVE ASSEMBLY AS IT STOOD WHEN
THE SIMON COMMISSION REPORTED¹

Constituency	Nominated		Elected						Total
	Officials	Non-officials	Non-Moham- medan	Moham- medan	Sikh	European	Landholders	Indian com- merce	
Government of India	14	5 ²							19
Madras	2		10	3		1	1	1	18
Bombay	2	1	7	4		2	1	2	19
Bengal	2	2	6	6		3	1	1	21
United Provinces	1	2	8	6		1	1		19
Punjab	1	2	3	6	2		1		15
Bihar and Orissa	1	1	8	3			1		14
C P and Berar	1	1 ³	3	1			1		7
Assam	1		2	1		1			5
Burma	1		3 ⁴			1			5
Delhi			1 ⁴						1
Ajmer-Merwara			1 ⁴						1
N.-W F Province		1							1
Total	26	15	52	30	2	9	7	4	145

¹ Report, vol I, p 168

² Nominated to represent the Associated Chambers of Commerce, Indian Christians, Labour interests, the Anglo-Indian community and the Depressed Classes The distribution of nominated non-officials may be varied by the Governor-General at his discretion The official membership of twenty-six is a fixed number though its distribution can be varied by the Governor-General

³ Nominated as the result of an election held in Berar which technically is not British territory

⁴ These five seats are filled by non-communal constituencies

PART IV

THE FEDERATION OF INDIA

INTRODUCTORY

THE FEDERAL PLAN NOT MADE OPERATIVE One of the basic concepts of the Act of 1935 is the establishment of an Indian Federation, incorporating British India and the Indian States. Part II of the Act is devoted to prescribing the details of the federal structure. But this Part was not intended to be given effect to simultaneously with the introduction of Provincial Autonomy on 1 April 1937. There were many difficulties in doing so. Lengthy negotiations and discussions were necessary before the requisite number of Princes could be persuaded to accede to the Federation. Besides, the scheme had evoked a very hostile reception in British India, and it could not have been enforced without creating a considerable amount of resentment and bitterness.

THE VICEROY'S STATEMENT Meanwhile, England has been involved, since September 1939, in a war with Germany, and during the continuance of the emergency, highly controversial issues have naturally been shelved. In the middle of October 1939 the Viceroy announced that the federal scheme has been suspended indefinitely. He also stated that His Majesty's Government will, at the end of the war, be prepared to regard the scheme as open to modification in the light of Indian views.

Consultation concerning the modifications with representatives of the different communities, parties and interests in India was also promised

The following pages give a brief outline of the federal structure that has been defined in the Act of 1935. However, the reader must bear it in mind that after the conclusion of the war and before the scheme actually comes into operation, it may be materially altered in many particulars, and therefore the account given here may ultimately prove to be only of academic interest.

XII

UNITARY AND FEDERAL STATES

As it is proposed that the existing unitary constitution of India should be transformed into a federation in the near future, it would be helpful to make at the outset a brief reference to those two types of constitutions, and to show the main points of difference between them. Both types are found to be existing and functioning in contemporary life. For example, England, France, Italy, Germany and Japan are unitary states; the United States, Canada, Australia and Soviet Russia are federations.

1. The Unitary State

ONE SUPREME SOVEREIGN A unitary state is one in which all governmental authority is concentrated in one supreme sovereign body. This body is vested with exclusive control over all matters, whether civil or military, concerning the state, and can pass laws, take executive action, impose taxation and incur expenditure in respect of any subject. There are no statutory limits on its jurisdiction and its authority, and it is responsible for making suitable arrangements for the efficient governance of the whole nation.

PROVINCES MAY BE FORMED BY IT It would be, of course, physically impossible for such a centralized organization to exercise direct administrative powers over a large geographical area. The difficulty becomes all the greater in a country which is huge in expanse and population. Even in a unitary state, therefore, smaller territorial divisions have to be, and are, formed for the convenience of administration. A specific sphere of activity is demarcated for them, and within that sphere they may be allowed considerable liberty of judgement and action.

THEY ARE SUBORDINATE Still, the constitutional position is quite clear. These units or provinces or states are merely the creations of the sovereign body, and unquestionably subordinate to its mandates in all respects. They owe their existence, powers and status entirely to the central government. By assigning some important administrative work to such political divisions, that supreme functionary does not abdicate any of its ultimate authority but only delegates some of its powers, under certain conditions, to a subordinate agency. It is free to resume at any moment what it has thus delegated, and is competent to exercise over-riding jurisdiction over all the actions and policies of its subordinates.

In short, in a unitary state there are no equals of the central government even in a limited sense. Its authority is supreme, and its will is not hampered by the existence of rights and privileges which it must respect and cannot touch.

2. The Federal State

On the other hand, a federation embodies principles which are fundamentally different, and results from the operation of certain psychological and sentimental forces. Even in its constitution there does exist a central government which is possessed of large powers. But it does not enjoy that all-pervading absolute authority which is postulated for it in a unitary state.

CIRCUMSTANCES WHICH LEAD TO A FEDERATION. There may be living, in the same neighbourhood, a group of small but independent national units, each having its own language, racial characteristics, and even religious beliefs. Yet, in spite of these differences, these states may also possess some common heritage, common affinities, common economic and political interests, and a common culture in the wider sense. They may therefore feel attracted towards each other for co-operative action by the impulse of a larger collective development. Or, even if such an inner similarity and tendency towards fusion are not present, the danger of a common enemy

who threatens all of them may naturally tend to bring the neighbours together in a closer alliance

A KIND OF POLITICAL CONTRACT. Such states, while desiring to preserve their individuality, may also be eager to form a union with others for certain specific purposes. They may be prepared to part with some of their sovereign powers in order to facilitate the creation of a larger composite sovereignty which would encompass all of them. A sort of political contract, whether actual or implied, may naturally follow from such a situation. It would provide the foundation and structure of a federal polity, and define clearly the relations of the contracting parties

AUTHORITY OF THE CENTRAL GOVERNMENT LIMITED It will be realized that the new political master, in the shape of the central government in a federation, is not an alien imposition, but is created out of themselves by the uniting nations and consists entirely of their representatives. The jurisdiction and authority of this superior are not unlimited, but are carefully demarcated and defined in the constitution itself. Within that sphere, it demands and obtains the unswerving loyalty of all the constituent units. Outside that sphere, it has no power or control and cannot interfere with the working of the provincial governments, which enjoy complete freedom of action and policy in their own sphere.

RIGHTS GUARANTEED TO PROVINCES Thus the provinces in a federal constitution have certain inherent rights and privileges guaranteed to them by the constitution itself. They are inviolable by the central authority. These component units do not exercise their power merely in virtue of delegation by a superior from whom it is really derived. The distribution of governmental work between them and the centre is effected by the constitution to the framing of which they have been a party and to which they have voluntarily subscribed.

UNITY IN DIVERSITY The federal arrangement is particularly suitable to populations which are not essentially homogeneous and yet have so many things in common that they form a distinct nationality in a broad

sense, as is the case with India. It maintains the independence of the different constituents and also brings them under the control of a vigorous central government. Unity without a deadening uniformity, diversity without disruption, free association without suppression are the chief objectives and the *raison d'être* of the federal union.

XIII

REASONS FOR MAKING INDIA A FEDERAL STATE

FEDERAL PRINCIPLE GENERALLY ACCEPTED There seems to be a general consensus of opinion both among Indian and British politicians that the proper form of government for a country like India is a federation. It is true that the particular federal scheme which has been formulated by the Act of 1935 has evoked fierce attacks and criticism from almost all political parties in India and has been rejected by them. Yet even leaders of the Indian National Congress have made it clear that their opposition is not directed to the federal principle as such. Some of them have advocated its positive adoption. It is therefore necessary to refer to the special circumstances which make it inevitable, in the view of many responsible persons, that a new type of constitutional framework should be created for India.

1. The Size and Variety of the Country

IMMENSE AREA OF THE COUNTRY The first consideration is the immense territorial extent of the country. India has been described as a sub-continent, and its area is practically equal to the whole of Europe without Russia. The government of such a vast geographical expanse by a single unified authority would present many difficulties, even if it is assumed that its inhabitants are thoroughly homogeneous in point of race, language and religion. A highly centralized government operating for such an extensive region might prove to be at once inadequate and excessive from the point of view of the needs of its provinces. Distance would make it difficult to establish continuous personal contact between the rulers and the ruled. In short, the task of administration might prove to be too unwieldy for the machine set up to carry it through.

ITS DIVERSE POPULATION AND OTHER CONDITIONS India is not only a country of continental dimensions but is also extremely varied in the composition of its population. Its huge area presents striking variations of cultural and economic development. It abounds in numerous races, speaking different languages and professing different religions. There are Hindus, Muslims, Parsees, Christians, etc., and also the Bengalis, Hindis, Punjabis, Gujeratis, Marathas, Canarese, Telugus, Tamils, etc., the religious and provincial divisions not being mutually exclusive. Each one of these units has a distinctive group consciousness, distinctive traditions and ambitions. The Indian people as a whole do not possess that inner affinity and coherence which are contributed by a common language, a common race and a common religion. On the other hand, many European countries are compact racial and linguistic units and some of them are also very small in size.

ITS TWOFOLD POLITICAL DIVISION It must be further remembered that India is a land of great antiquity. Its history has left an impressive variety of legacies to modern times. This ancient country has witnessed the rise and fall of many empires and the changing vicissitudes of fortune of many personalities and peoples. Such an eventful existence has naturally tended to produce many permutations and combinations of political arrangement. The British conquest of India has, for instance, resulted in a new division which is represented by two bold colours on the Indian map: the red depicts what are known as the British Indian Provinces and the yellow depicts what are known as the Indian States. The respective status of these two units has to be taken into account when the future constitution of India is under consideration.

2. The Indian States

THEIR ORIGIN The ancestors of the present rulers of most of the Indian States were either independent kings or powerful and successful ministers, administrators or generals. In the political cyclone that swept over the

country during the eighteenth and nineteenth centuries, many such potentates perished. Those who believed in the wisdom of bowing to the storm could survive the great upheaval, but with lessened dignity and stature. They submitted to the conqueror, and were permitted to continue a diminutive existence on condition that their loyalty was unequivocally transferred to the new masters.

There are in all about 600 such States, covering a total area of about 7,00,000 square miles and with a population of nearly 80 millions. Some are very small with an income of only a few thousand rupees a year. Others like Hyderabad, Baroda, Mysore, Kashmir, Gwalior and Travancore are as big as some of the independent countries of Europe.

THEIR CONSTITUTIONAL POSITION The constitutional position of these States is rather peculiar. They have lost their supreme sovereignty. There is no international recognition of their independence. Their defence and external relations are entirely in the hands of the suzerain. On the other hand, in purely internal matters, the more important States are in full enjoyment of all the authority that is associated with government, while the powers enjoyed by others are more restricted. Even in this sphere, the Paramount Power can and does interfere to prevent a State from falling into administrative disorder or financial chaos, but such interference is infrequent though it is never ineffective.

CHANGE IN THE CHARACTER OF THE GOVERNMENT OF INDIA The control of the Crown over the Indian States is exercised by and through its representatives, the Viceroy and the Government of India. The latter has been entirely bureaucratic in form and concept till now. But the political advance of British India necessarily implies an important change. The purely bureaucratic system will ultimately be transformed into a government of the responsible type. Under such changed conditions, other things remaining the same, the Crown's control over the Indian States would automatically pass into the hands of the Indian legislature.

NOTHING UNTOWARD IN THE CHANGE Such a transition would be natural. It does not embody any manifest impropriety or injustice. The East India Company was not a sovereign body. It signed treaties and engagements with Indian rulers, directly or by implication, on behalf of the Crown. The successors of both the contracting parties are entitled to claim all that had belonged to their predecessors. It is on the strength and in the exercise of that claim that the present rulers of Indian States are enjoying their patrimony of power, prestige and privilege.

THE CONSTITUTIONAL LOGIC The Government of India became successors and legal heirs to the East India Company. If they inherited all its liabilities they were also entitled to inherit all its assets. As the agents of the Crown, they have been exercising, when necessary, superior control over the Indian States. They ought to be entitled to do so in the future also, irrespective of any alteration in their own status. The Government of India continues to be the Government of India, whether it is composed of an alien bureaucracy or of a popular Indian democracy. A transition towards the latter status is in itself no justification for depriving that body of its inherited powers.

THE STATES DEMAND SAFEGUARDS The rulers of the States have been looking at the problem in a different light. Their attitude betrays distrust of a Government of India which may be formed and conducted on democratic principles. They seem to be afraid of its possible encroachments on their internal autonomy, and insist on being provided with ample safeguards to remove that danger. It is their view that the special prerogatives and privileges of their order must be held to be sacrosanct and inviolable under all conditions. They must not be made even remotely liable to modification or subtraction by a popular Indian Government.

SIGNIFICANCE OF TREATIES AND SANADS Such an opinion is based on the concept that the treaties, engagements and sanads existing between the Indian States and the Paramount Power have a wide significance. On the

one hand, they enunciate the unconditional loyalty and subordination of the States to the British Crown. On the other hand, they also convey the solemn assurance given by the British Crown that as long as the States continue to be loyal to the overlord, their rights and internal sovereignty will be respected and preserved intact. The political advance of India as a whole or of British India only must not diminish the strength of that vital guarantee.

THE STATES ARE AUTOCRACIES The rulers of Indian States are therefore opposed to joining the Indian Federation unless they feel confident that their present independence will be maintained in all its fulness in the federal arrangement. They are averse to participating or acquiescing in India's political freedom except on those terms. It must be remembered that most of the Indian States are, in their internal affairs, undiluted autocracies. They are under the personal government of rulers whose authority is not hampered by any effective constitutional restraint. The subjects of States have no decisive voice in their administration. They cannot vote taxes or regulate expenditure or control the executive and the legislative machine.

AN ANOMALOUS SITUATION This gives rise to a situation which is both anomalous and perplexing. The absolute rulers of the States seem to prefer the superior control of a foreign bureaucracy to the domination of an Indian democracy. An assurance of their internal sovereignty by the British Crown and Parliament may produce a strange result. It may serve as a bulwark against any agitation for popular rights and liberties inside the States. It may help, ironically enough, in strengthening and perpetuating a form of government which is essentially feudal in its concept and undemocratic in its structure, and which is being deliberately banished from British India.

3. The British Indian Provinces

STRONG UNITARY GOVERNMENT The British Indian Provinces represent that part of the Indian dominion

which was not only conquered but annexed by the British power. It was placed under the direct rule of British officers. The Regulating Act, and more particularly the Acts of 1833 and 1858, established in British India a highly centralized unitary government. All civil and military authority was concentrated in its hands. Provinces had indeed to be formed and Governments established in them. But all of them derived their power from the Central Government and only performed such functions as were delegated to them by that authority.

DECENTRALIZATION Decentralization was begun by Lord Mayo in 1870 and it reached a fairly high stage in the separation of central and provincial subjects in the Montford Reforms. But even that scheme did not confer a new status upon the provinces. The Government of India were neither required nor permitted to abandon any of their final responsibilities. Transfer of power by and from them was merely devolution and delegation. It did not create co-ordinate entities but only subordinate agencies in the shape of provincial authorities.

CONTROL OF PARLIAMENT Constitutionally, the British Indian Provinces or British India are subject to the final authority of the British Parliament which can act through its agent, the Secretary of State for India. The form of their governments, the structure of their executive, legislature and judicature, are prescribed by Parliamentary Acts. Even the daily routine of their administration was under the general control and supervision of the Secretary of State till the introduction of Provincial Autonomy in 1937. It is the British Parliament which determines the nature of the Government that shall be established to function in British India. On the other hand, the rulers of Indian States are immune from this kind of interference and control, because their relations with the sovereign power are determined by treaties, charters and sanads. Parliament cannot pass Acts bearing upon their internal affairs, nor can it dictate the framework of their administrative system.

4. The Essential Unity of India

TWO DISTINCT ENTITIES Thus there are two constituents which make up political India today. One is the group of autonomous Indian States, exercising extensive rights of internal sovereignty. They would have to sacrifice a portion of this sovereignty in order to join an All-India Federation. Secondly, there are the efficiently organized British Indian Provinces whose powers are theoretically wholly derivative, and therefore liable to be modified, reduced or withdrawn by the Central Government. They have not to part with anything for the sake of the Federation because they possess nothing. On the other hand, by being incorporated into it, they will gain an authority and a status which they have never enjoyed.

ELEMENTS OF UNITY It is generally acknowledged that behind all the racial, linguistic, religious and political divergence that is presented by the Indian panorama, there is an inherent oneness, a fundamental unity. Geographically, India has been a distinctive coherent whole from historical times and that in itself is a great uniting factor. Politically, it has lived at intervals under the unifying influence of a single imperial authority. Above all, among very large portions of its population there has existed such a close affinity in intellectual and emotional outlook, in cultural development and spiritual allegiance, that they feel themselves to have been made in the same basic mould and to belong to the same family.

THE STATES ARE NOT FUNDAMENTALLY DIFFERENT The Indian States cannot, therefore, be ignored in the evolution of responsible government for India. They cannot be permanently set aside. Though in a separate category of their own they are part and parcel of the same motherland. Between them and British India there is a complete identity of interests, and also of race, language, culture and historical traditions. Their difficulties and their problems, both in times of peace and in times of war, are common. It is merely an accident,

however important, that certain groups of Indians, occupying certain portions of Indian territory, live under a different constitutional arrangement. The cleavage that is thus created between people who are organically one in all respects is quite artificial and has no correspondence to the fundamental reality.

OPINION OF THE PRINCES At the first Round Table Conference in London, several prominent Princes proudly declared that they were Indians first and Princes afterwards. Nor are the subjects of Indian States in any sense different from their neighbours and brethren in British India. The Indian nation, in the larger sense, must be considered to be one and indivisible, whatever may be the nature and the degree of the autonomy conferred upon its units. British India and Indian India are two parts of the same entity.

ADOPTION OF THE FEDERAL IDEAL Those who frame a constitution for India have to take into consideration these peculiarities. The Indian state ought to be an expression of Indian life. There must be diversity in it and also a fundamental unity. The form of the Indian government must embody and be consistent with that contradictory dualism. It should facilitate the growth of the individual component units and also of the whole nation. Many Indian and British statesmen feel that this ideal can be best achieved by a federal constitution. It can secure to the provinces all the necessary freedom to develop in their own way and to govern themselves, and also provide a strong central government to guard and advance the interests of all.

5. Obstacles to an Indian Federation

NO COMPULSION FOR STATES A great obstacle to the introduction of the federal system for the whole of India is the constitutional status of the Indian States. They cannot be compelled to part with even a fraction of their sovereignty by Parliamentary enactment. That sacrifice can only be spontaneous and voluntary. Till a few years ago, it was not expected that many Indian Princes could be persuaded to merge some aspects of their individuality

in the larger Indian whole. However there was an agreeable surprise at the first Round Table Conference in London. The Princes who were present at that conference gave their enthusiastic support to the federal principle. They even declared their willingness to accept a constitutional scheme which is fundamentally based on that ideal. Yet the actual terms on which they would be prepared to join the Federation have been the subject of a long controversy, and no satisfactory agreement has been reached.

A THEORETICAL OBJECTION A lesser and a purely theoretical objection was envisaged by constitutional purists. Writers on political science have described one characteristic feature of a federation. It is formed, they say, as the result of a deliberate combination of states which are sovereign. These states must choose to sacrifice their independence in the cause of a new corporate existence. It therefore seems to follow that where there are no independent sovereign states pre-existing, a federation cannot be brought into being. Even Mr Montagu expressed the view that the truly federal element cannot enter into Indian polity. 'There is no element of pact. The government of the country is one, the Local Governments are literally the agents of the Government of India. The last chance of making a federation of British India was in 1774 when Bombay and Madras had rights to surrender. The provinces have now no innate powers of their own and therefore nothing to surrender in the foedus.'

POLITICAL THEORY CANNOT BE TOO RIGID However, it is obvious that political theory, like all social theory, must take cognizance of the facts and interpret reality. A social science is the summation of human experience. Its method is mainly inductive. The formulas enunciated by such a science cannot be completely rigid, but must have the elasticity of a living organism. Its generalizations may sometimes prove to be inadequate because a particular type of experience has been exaggerated into a universal law. Emphasis must be laid not so much on the form, as on the spirit, of the regulating

causes and conditions. It does seem a little odd that the chances of establishing a federation of India should appear to have been irrevocably lost because, in the circumstances of 1774, the Parliament of Britain thought it wise to pass the Regulating Act for the better government of India¹. Constitution-building evidently cannot wait for such a scholastic inflexibility to relent and to leave the way open for natural adjustments and growth.

TWO CONDITIONS NECESSARY FOR A FEDERATION Two factors are necessary to bring the federal doctrine into play and both of them are found in India. There is therefore no theoretical or practical difficulty in giving a federal shape to the Indian polity. The first of these factors is the existence of separate groups of human beings, differentiated from each other by language and race, but each distinct in itself. The second is a keen desire on the part of these groups to coalesce to a limited extent and also to retain their individuality in the amalgamated whole. The political independence of these groups may be usual but is not indispensable. It is infinitely more important that they should be well-knit racial, linguistic or cultural units, and further, that they should sincerely aspire to combine into a common nationhood.

6. Arguments Against an Indian Federation

IT WILL DISCOURAGE THE SENSE OF A COMMON NATIONALITY There is an influential school of political thought in India which is keenly opposed to the incorporation of the federal principle in India's constitutional structure. It does not welcome the abolition of the unitary system for the following reasons.

First, it is contended that India has been torn by dissensions for centuries. The separatist and narrowly selfish tendency has dominated the whole course of Indian history and its results have been fatal. A century of strong, centralized government, with its uniformity of law, policy, and executive action, has fostered the concept of a common Indian nationhood. Its disappearance may encourage an ugly reversion to

disintegrated national life and give a setback to the forces that make for a fusion of discordant elements

ITS FORMATION WILL BE IMPRACTICABLE Secondly, it is pointed out by these critics that a federation on really sound lines would be impossible in India in actual practice. The States will not agree to descend to a status of perfect equality with the other constituents, namely, the British Indian Provinces. They will demand certain special assurances and safeguards. To concede such extraordinary privileges would inevitably negative the federal doctrine. On the other hand, to refuse them would scare the Princes away from the proposed federal union.

There is very great force in these arguments. The evils they envisage are quite real. However, the balance of consideration seems, on the whole, to lie in favour of federation. The point cannot be elaborately discussed in these pages.

ESTABLISHMENT OF THE FEDERATION AND THE DISTRIBUTION OF SUBJECTS

1. Conditions to be Fulfilled

NEW STATUS OF THE PROVINCES As it was decided that a federation was the most suitable form of government for India, provision was made for its establishment in the Act of 1935. There was no difficulty about the incorporation of British India in the new arrangement. Constitutionally speaking, the British Parliament is considered competent to prescribe, by an Act, the political status and the administrative machinery of the British Indian territory. But as the federation is to consist of provinces which are intended to be autonomous and self-governing, it was felt that their old status of dependence on and subordination to the central government must cease. They could no longer be looked upon as mere agents of a political superior from whom their powers were derived.

RESUMPTION OF POWERS BY THE CROWN AND THEIR REDISTRIBUTION Section 2 of the Act therefore clearly lays down that all rights, authority and jurisdiction, hitherto belonging to His Majesty the King, Emperor of India, which appertain or are incidental to the government of the territories in India, are exercisable by His Majesty, except in so far as is otherwise provided by the Act. All powers hitherto enjoyed by the Secretary of State acting singly or in council, by the Governor-General acting singly or in council and by any Governor or Local Government are supposed to have been resumed by the Crown. The Central and Provincial Governments have thus been reduced, in their relation to each other, to a position of equality in negation. The powers so resumed are taken to have been redistributed by the Crown between the Federal

or Central Government on the one hand and the provinces on the other. Both these entities now operate directly on his behalf and as his representatives and derive their authority from the same source. The provinces have therefore obtained a co-ordinate, and not a subordinate, status in their relation to the Federal Government.

THE ACCESSION OF THE STATES MUST BE VOLUNTARY. The position of the Indian States is quite different. They are not subject to legislation by the British Parliament, and are assured of their internal sovereignty by the treaties, sanads and usages which govern their relations with the Crown. The Crown does, of course, enjoy rights of paramountcy over them. But it cannot resume in respect of the States those powers which it could resume in the case of British India. The States cannot be compelled to join the Indian Federation by Parliamentary enactment. They must join it of their own accord and of their own free will. The Act of 1935 does not actually inaugurate the Federation of India. It lays down the method and procedure by which the accession of the States may be effected if and when their Rulers think it fit to accede. It also prescribes the conditions which must be satisfied before the Federation can come into existence.

THE INSTRUMENT OF ACCESSION. According to Section 6, a Ruler who decides to enter the Federation has to execute what is called an Instrument of Accession which is acceptable to His Majesty, and which will be binding upon the Ruler, his heirs and successors. He will declare through this Instrument that he has acceded to the Federation and that, subject to the terms of the document, the federal authority shall function in his State to the extent to which he has accepted the Federation. He will also undertake to give due effect within his State to those provisions of the Act which are applicable to it. The Instrument will specify the matters which the Ruler accepts as those in which the federal legislature may make laws for his State, and also the limitations, if any, on the power of that legisla-

ture By a supplementary Instrument the number of such matters may be extended

ITS FORM AND CONTENT TO BE COMMON His Majesty is free to accept only such Instruments or supplementary Instruments as he considers it proper to do The Joint Parliamentary Committee suggested that the Instruments should in all cases be the same in form though the list of subjects accepted by a Ruler as federal may not be identical in every case They were also of the opinion that there should be a kind of standard list of such subjects and that it should be accepted by all the federating States, deviations from it being permitted in exceptional cases This would ensure the maximum amount of uniformity in the federal sphere consistently with the divergent claims of the uniting parties

THE PROPORTION OF STATES WHICH MUST ACCEDE Section 5 lays down the following two conditions which must be satisfied before the Federation can come into existence (1) States, the Rulers of which are entitled to choose not less than 52 members of the Council of State, and (11) States, the aggregate population of which amounts to at least one half of the total population of all the States put together, have to decide to accede to the Federation Thus the new constitution cannot become an active reality unless a substantial portion of the States' area and people are brought within its orbit It has been found by the experience of the last few years that the task of securing the accession of the Princes is full of difficulty Before the outbreak of the present war, a draft Instrument was presented to them by the Viceroy as the Crown's Representative, and endless discussions were held on its clauses and wording But no agreement was reported to have been reached

PROCLAMATION BY HIS MAJESTY After the accession of the requisite number of States has been signified, it would be lawful for His Majesty to declare by Proclamation that from an appointed day the Federation of India under the Crown has been inaugurated But before the issue of such a Proclamation an address in that behalf must be presented to His Majesty by each

House of Parliament. The authority of the British people is thus again emphasized. It will be realized that the British Indian Provinces, whether Governors' or Chief Commissioners', are to be incorporated in the Federation by the provisions of the Act. Their accession is not left to their voluntary action or choice as in the case of the States. It is ordained for them by Parliament.

AFTER TWENTY YEARS After the establishment of the Federation, requests from Rulers for admission have to be transmitted to His Majesty through the Governor-General. If a period of twenty years has elapsed after the establishment, such requests will have to be endorsed by each chamber of the federal legislature. This time-limit will have a salutary effect. It will tend to check frivolous vacillation on the part of some of the Princes and help to complete the federal picture at least within a period of twenty years after it is brought into being.

2. Three Lists of Subjects and Residuary Powers

TWO SPHERES OF GOVERNMENT A federal structure must necessarily provide for two distinct divisions of the governmental sphere. It has to take cognizance of the provinces (or the federating units) and the central organization under which they are united. The jurisdiction of the two authorities requires to be clearly defined. This is usually done by the following method. Certain specified subjects are assigned to the provinces and the rest are then given over to the centre, or the process may be reversed, and particular subjects may be allotted to the centre and the remainder placed under the authority of the provinces. Only one list, enumerating particular items, is necessary under this arrangement. The other group of subjects is automatically prescribed in a general but a negative manner. It consists of an undefined and unparticularized mass of all those items which are not included in the list that is specially prepared.

THREE LISTS OF SUBJECTS A more elaborate course is followed in India. An exhaustive and specific list

is drawn up for the Central Government and another is similarly drawn up for the provinces. A third large list is further prepared for the concurrent jurisdiction of those two authorities. This is expected to be a useful device for securing uniformity in certain matters without introducing centralization. It is expected to counteract the tendency towards a vexatious multiplicity of law and practice which would hinder the growth and consciousness of a common nationality. The three lists have been given in the Seventh Schedule of the Act of 1935.

RESIDUARY POWERS In spite of the punctilious care with which the lists have been compiled by men of experience, it may happen that certain items have escaped attention. Entirely new circumstances and responsibilities may also arise subsequent to the preparation of the lists and the new items will have to be assigned. A federal constitution must therefore provide for an allocation of residuary powers either to the provinces or to the centre.

MODERN TENDENCY The whole trend of modern life is towards integration. Scientific inventions are reducing time and distance and bringing all humanity into one orbit. The federal sphere has been constantly widening in those countries which have that form of government. Political writers have even stated that the federal stage may inevitably lead to the unitary stage. The impulse for union cannot abruptly or arbitrarily stop. The opportunity for mutual contact and understanding that a federation provides is bound to create closer bonds and bring about a greater coherence among the constituent units.

COMMUNAL DIFFERENCES IN INDIA Unfortunately the dispute assumed a communal aspect in India when the proposal for allocation of the residuary powers came up for discussion. The Hindus generally favoured the strengthening of the centre and leaving the residuary powers to it. On the other hand the Muslims preferred the opposite course as being more desirable in the interests of minorities. Parliament had to give its

decision on these conflicting claims, and it came to the comfortable conclusion that residuary powers could most safely and conveniently rest neither with the centre nor with the provinces, but in effect with the Governor-General! Section 104 of the Act says that the Governor-General may empower either the federal or the provincial legislature to enact a law with reference to any matter not enumerated in the Central, Provincial and Concurrent lists

THE FEDERAL LEGISLATIVE LIST The following are some of the important items in the Federal Legislative List, which contains in all 59 subjects His Majesty's naval, military and air forces borne on the Indian establishment, naval, military and air force works; local self-government in cantonment areas, external affairs; ecclesiastical affairs, currency and coinage, public debt of the Federation, posts, telegraphs, telephones, wireless, broadcasting, post-office savings bank; federal Public Services and Federal Public Service Commission, Benares Hindu University and Aligarh Muslim University, survey of India, ancient and historical monuments, census, admission into and emigration and expulsion from India, federal railways, maritime shipping and navigation, major ports, aircraft and air navigation, lighthouses, copyright and inventions, cheques, bills of exchange, etc., arms and ammunition, opium, so far as regards cultivation and manufacture, petroleum; corporations, development of industries, labour in mines and oil-fields, insurance, banking, customs duties, excise duties on tobacco and other goods manufactured or produced in India except (a) alcoholic liquors, (b) opium, Indian hemp and other narcotics, and non-narcotic drugs, (c) medicinal and toilet preparations containing alcohol, corporation tax, salt, state lotteries, naturalization, taxes on income other than agricultural income, taxes on capital, succession duties; stamp duty on bills of exchange, cheques, promissory notes, bills of lading, letters of credit, insurance policies, etc., terminal taxes on goods or passengers carried by railway or air, taxes on railway fares and freights.

THE PROVINCIAL LEGISLATIVE LIST. The following are some of the important items in the Provincial Legislative List, which contains in all 54 items: public order and justice and courts; police; prisons, reformatories, etc.; public debt of the province; provincial Public Services and the Provincial Public Service Commission; land acquisition, local government; public health and sanitation, hospitals and dispensaries; education, communications; irrigation and canals, etc.; agriculture, land tenures, agricultural loans, etc.; fisheries; weights and measures; forests; gas and gas-works, development of industries in the province; trade and commerce within the province, intoxicating liquors and narcotic drugs; unemployment and poor relief, theatres and cinemas but not the sanction of cinema films for exhibition, betting and gambling; co-operation; land revenue; excise duties on alcoholic liquors for human consumption, opium, medicinal preparations containing alcohol; taxes on agricultural income, taxes on land and buildings, charities and charitable institutions, duties in respect of succession to agricultural land, capitation taxes, taxes on professions, trades, callings and employments, subject to section 142A of the Act;¹ taxes on animals and boats; taxes on advertisements and sale of goods, local cesses; taxes on luxuries, entertainments, amusements, betting, gambling, etc.; stamp duties on documents not mentioned in the Federal List; tolls; taxes on vehicles whether mechanically propelled or not, taxes on the consumption or sale of electricity, universities, except those at Benares and Aligarh.²

THE CONCURRENT LEGISLATIVE LIST The following are some of the important items in the Concurrent Legislative List, which contains in all 36 items: criminal law; criminal procedure; civil procedure, evidence and oaths; marriage and divorce, adoption, etc.;

¹ As amended by the *India and Burma (Miscellaneous Amendments) Act, 1940*.

² The last three items were added by the *India and Burma (Miscellaneous Amendments) Act, 1940*

wills, intestacy, etc.; transfer of property other than agricultural land, registration of deeds and documents, etc, trusts and trustees; contracts, bankruptcy, non-judicial stamp duties, legal, medical and other professions; newspapers, books and printing presses, lunacy; poisons and dangerous drugs; boilers; European vagrancy; factories, welfare of labour, unemployment insurance, trade unions, industrial and labour disputes, contagious diseases; electricity; inland shipping and navigation; sanctioning of cinematograph films for exhibition, detenus

THE FEDERAL EXECUTIVE

1. The Position and Powers of the Crown

SOVEREIGNTY OF THE CROWN The sovereignty of the British King is supposed to extend to the whole of the British Empire, and he automatically becomes the legal head of every system of government and administration that may be created for the different component parts of that empire. Constitutions of self-governing Dominions like Canada and Australia have been framed on the basis that the King is their supreme sovereign. The same is also true of what are known as the Crown Colonies. By the Act of 1935, British Indian Provinces and the Indian States are to be federally united under the British Crown. The King will become the highest legal dignitary in the Federation of India as he is in the existing unitary government of the country.

HIS CONSTITUTIONAL POSITION But it is an invariable dictum of the British constitution that the King never acts except on the advice of his responsible ministers. All his powers are exercised for him by them. In matters pertaining to the Dominions he is advised by the Dominions' Ministers who are responsible to their own legislatures and peoples, in respect of territories which do not enjoy rights of full self-government, advice is tendered to the Sovereign by Ministers who are responsible to the British Parliament and the British nation.

TWO SOURCES OF HIS POWERS As the Joint Parliamentary Committee remark, 'The dominion and authority of the Crown extends over the whole of British India. It is derived from many sources, in part statutory and in part prerogative, the former having their origin in Acts of Parliament, and the latter in rights based upon conquest, cession or usage, some of

which have been directly acquired, while others are enjoyed by the Crown as successor to the rights of the East India Company'

STATUTORY POWERS. In the federal constitution which is envisaged by the Act of 1935, certain powers are specifically vested in the Crown. For example, the appointment of the Governor-General, the Governors and the Commander-in-Chief is to be made by His Majesty, he has to issue Instruments of Instruction to the Governor-General and the Governors, many orders-in-council pertaining to various subjects have to be issued by him, he can disallow laws passed by either the federal or provincial legislatures, Instruments of Accession executed by Rulers of States have to be approved of and accepted by him, it is in his power to issue a proclamation establishing the Federation of India. This is not an exhaustive list, other powers have also been mentioned in the Act as being exercisable by His Majesty with reference to the government of British India.

PREROGATIVE POWERS Among the prerogative powers of the King may be mentioned the control of foreign policy including the right to cede territory or annex it; right to escheat gold and silver mines and treasure troves, immunity from civil or criminal proceedings; right to grant honours, right to grant pardon, reprieve, respite or remission of punishment, and so on.

PARAMOUNTCY Though the Indian States were allowed to retain their internal sovereignty to a great extent by the treaties that were made with them by the East India Company in the process of conquest, the Crown has always been considered to have the rights of Paramountcy over them. The relations between the States and the Crown are not on a purely contractual basis. The authority of the suzerain has been continually clarified and enlarged by the Crown's exclusive right of interpreting the old treaties in the light of modern conditions, and by the custom, practice and usage of the Political Department of the Government of India. Even the Butler Committee could not define the scope of

paramountcy in a particular formula 'The relation between the Paramount Power and the States', they said, 'is not fixed, rigid or static, but adaptable, mobile or dynamic in character Paramountcy must remain paramount'

THESE POWERS ARE NOT ACTUALLY EXERCISED BY THE CROWN. It must be clearly understood that all these powers, though technically vesting or inhering in the Crown, are not expected to be directly exercised by him at his own free will or discretion In the British constitutional philosophy, the monarch is not supposed to play an active part in the administration of the state. Many powers are nominally held by him, but they are actually exercised on his behalf by Ministers who are, in the last resort, responsible to the people In the case of India, the powers assigned to or enjoyed by His Majesty will not be exercised by popular Indian Ministers but by the Secretary of State for India and the British Cabinet, who are the servants of the British public

2. Introduction of Dyarchy

NO IMMEDIATE GRANT OF FULL SELF-GOVERNMENT The Act of 1935 was not intended to satisfy India's demand for an immediate introduction of full-fledged responsible government, both in the federal centre and in the provinces Parliament was not prepared to accept the claim for such a wholesale and radical alteration of the Indian constitution In spite of the keen demand of the Indian people, no new preamble, stating clearly that it was the intention of Parliament to confer upon India at an early date Dominion Status of the Statute of Westminster variety, was framed for the Act of 1935. The utmost concession that was shown to Indian opinion was to keep unrepealed the halting and unsatisfactory pronouncement which had formed the preamble of the Act of 1919

INTRODUCTION OF PARTIAL RESPONSIBILITY The changes proposed in the new Act are inspired by a restricted ideal and toned down by numerous limitations The principle of responsibility will be introduced in

the Federal Government to a small extent, but otherwise its bureaucratic character will be maintained. To put it briefly, a dyarchical system will be established in the federal sphere. The use of that expression has been scrupulously avoided in the Act, though the Joint Parliamentary Committee freely mention it in their Report.

GOVERNOR-GENERAL AND CROWN'S REPRESENTATIVE. At the head of the Federal Government will be the Governor-General of India and Crown's Representative (or Viceroy). The two offices were not distinct till the formulation of the federal scheme. The Crown's authority and jurisdiction over both British India and the Indian States were exercised by the Governor-General-in-Council under the general supervision of the Secretary of State. But now they have been separated. The Crown's Representative will hereafter perform the duties and functions of the Crown in its relations with the Indian States. It is lawful for His Majesty to appoint one person to hold both the offices, and normally speaking the Governor-General and Crown's Representative (or Viceroy) is expected to be one and the same man.

RESERVED AND TRANSFERRED SUBJECTS. Subjects in the Federal Legislative List will be divided into two groups. One, which may for convenience be called Reserved though the word is not used in the Act, will comprise defence, ecclesiastical affairs, external affairs except the relations between the Federation and any of the Dominions in the British Empire, and tribal areas. The other, which may similarly be designated as Transferred, will include all the remaining federal items.

COUNSELLORS AND MINISTERS. The Reserved departments will be administered by the Governor-General with the advice of a new type of officials called Counsellors. They will not form a council like the present Executive Council, and will not be responsible to the federal legislature but only to the Governor-General. The Transferred departments will be admin-

istered by him with the aid and advice of a Council of Ministers who will be members of the federal legislature and responsible to it. The budget will be common to both the parts of government, and the same legislature will make laws for both.

In studying the federal executive, attention will have to be paid to the Governor-General, Counsellors and Ministers, and to their collective working under the dyarchical plan. This is done separately in the following sections.

3. The Governor-General

APPOINTMENT The Governor-General of India will, as now, be appointed by His Majesty on the advice of the Prime Minister of Britain, and will be expected to possess the same qualifications that are possessed by him today. The Viceroy or Crown's Representative will, as a normal practice, be combined in his person, and he will continue to enjoy immense authority and prestige. The importance of the office and of the personality which holds it will not diminish even after the inauguration of the Federation.

THREE WAYS OF EXERCISING POWERS The Governor-General will have many powers, ordinary and extraordinary, in the executive, legislative and financial domains of government, as he has at present. But a new feature of the Act is that three different ways for the exercise of those powers have been defined. These ways apply to all departments of government whether Reserved or Transferred and cover the whole sphere of the civil and military activity of the State.

(1) *Acting in his Discretion* In some cases, the Governor-General has to act in his discretion, in doing so he need not consult his Ministers at all (though he is not definitely prevented from consulting them), and may take decisions on his own responsibility. It has been calculated that no less than 94 different sections of the Act make a mention of this power and direct the Governor-General to exercise it. They refer to practically every important governmental activity and include

subjects like the Reserved departments, rules for the transaction of ministerial business and keeping the Governor-General informed about certain matters, assent to bills, 'summoning legislative chambers for a joint sitting, suspending the constitution, control over the actions of the Provincial Governments, the Reserve Bank, and the Railway Authority

(ii) *In his Individual Judgement* In some cases the Governor-General is asked to exercise his individual judgement, in doing so he is expected to take the advice of his Ministers, but need not necessarily accept it and act accordingly. This power is mentioned in 32 different sections of the Act and they also concern many important subjects, including items like the special responsibilities, the Advocate-General, appointments and postings of certain officials, the High Commissioner, etc

(iii) *On the Advice of Ministers* In the cases that remain, the Governor-General has to act on the advice of his Ministers, and therefore their advice must be sought and accepted. The field for action that is left after the above deductions are made is extremely limited.

SUBORDINATION TO THE SECRETARY OF STATE It is laid down in section 14 that when the Governor-General is required to act in his discretion or in the exercise of his individual judgement, he shall be under the general control of the Secretary of State and shall comply with such particular directions as may from time to time be given by him. Parliamentary authority over a large field of Indian administration is thus maintained even in the new constitution, and the representatives of the Indian people have been deprived of an effective voice in those matters.

RELATIONS WITH THE EXECUTIVE The Governor-General may appoint Counsellors, not exceeding three in number, to assist him in the administration of what have been described here as the Reserved subjects of the Federation. His relations with them are not defined in the Act, and the method of their working will

obviously be determined by conventions and practice. But it is clear that they will have no kind of veto over any of the actions of the Governor-General

The Governor-General has also been given the power to appoint a Financial Adviser who shall hold office during his pleasure, and whose salary and other conditions of service will be determined by him

Technically speaking, it is the Governor-General who has to choose and summon the federal ministers. But as they must enjoy the confidence of the legislature, his power in this respect may, in practice, prove to be severely limited. He has however the right to preside over their meetings in his discretion, and to make rules of business for them

RELATIONS WITH THE LEGISLATURE. The Governor-General has been given considerable powers over the legislature. He can summon, prorogue, and dissolve the Federal Assembly. He can make rules of procedure for regulating the business before either house. His previous sanction is required for the introduction of many important kinds of Bills,¹ and his assent is required for all Bills passed by the legislature before they can become Acts. He may reserve certain Bills for the assent of His Majesty. The power to summon joint sittings of the two chambers of the federal legislature is vested in him.

In addition to these powers, the Governor-General can issue ordinances, either on the advice of his Ministers or in his discretion. He can also pass what will be known as the Governor-General's Acts entirely on his own authority and without any reference to the legislative bodies if he thinks it necessary to do so. This is of course an exceptional and a very comprehensive power, and takes the place of the existing method of certification.²

¹ As for example, bills pertaining to coinage or currency, the Reserve Bank, the Federal Railway Authority, the Federal Court, the Public Service Commission, etc

² *Government of India Act, 1935* sections 42-4

CONTROL OVER THE PROVINCES The provincial Governors and Governments are under the control of the Governor-General in several respects. Section 54 lays down that when the Governor is required to act in his discretion or to exercise his individual judgement, he shall be under the general control of the Governor-General and shall comply with such particular directions as may be given by him from time to time. A large field is covered by this provision. It has been calculated that there are about 43 sections of the Act in which the Governor-General's superior powers in respect of certain provincial matters have been specifically mentioned. Besides, section 126 (clause 5) definitely empowers the Governor-General, acting in his discretion, to issue orders to a Governor as to how the executive authority in the province should be exercised for preventing any grave menace to the peace and tranquillity of India.

SPECIAL RESPONSIBILITIES Over and above all these powers, the Governor-General has been invested with what are described as Special Responsibilities. This legislative innovation is a unique product of the Act of 1935. Section 12 defines them as follows: (a) prevention of any grave menace to the peace or tranquillity of India or any part thereof; (b) safeguarding of the financial stability and credit of the Federation, (c) and (d) safeguarding of the legitimate interests of the minorities and the rights and interests of the Services; (e) preventing discrimination against the United Kingdom as mentioned in sections 111 to 121 of the Act; (f) preventing goods of United Kingdom or Burmese origin from being subjected to discrimination or penal treatment, (g) protection of the rights of any Indian State or its Ruler, (h) securing the due discharge of those functions which have to be exercised in his discretion or in his individual judgement.

These Special Responsibilities have to be fulfilled by the Governor-General exercising his individual judgement whenever he thinks any action in that regard is necessary.

CONCENTRATION OF POWER It will be seen that every important aspect of administration—peace and order, finance, the Services, fiscal freedom of India, minorities, discrimination against Britain—has been included in the above enumeration. It represents a great concentration and combination of over-riding powers, both tangible and intangible, defined and undefined. Their frequent or infrequent exercise will appreciably affect the value of the new constitution.

THEY APPLY TO THE WHOLE SPHERE OF GOVERNMENT. It must also be clearly understood that the formulation and definition of Special Responsibilities is not merely equivalent to reserving a certain number of departments for the Governor-General's or Governor's exclusive jurisdiction, as is done in dyarchy. The division introduced by them is not departmental and physical. It should rather be described as psychological. Special Responsibilities lead to and have to be fulfilled by the functions of interpretation, judgement and opinion. They are intended to cover the whole domain of administration, whether ministerial or bureaucratic, federal or provincial. There is no subject which is beyond their reach and range, no executive action which is immune from their control.

ISSUE OF PROCLAMATION IN AN EMERGENCY If for any reason the constitutional machinery provided by the Act fails to work and any of the wheels of government threaten to become immobile, the Governor-General has been given special power to combat the situation. Section 45 prescribes that if the Governor-General is satisfied that a situation has arisen in which the government of the Federation cannot be carried on in accordance with the provisions of the Act, he may issue a Proclamation, and thereby (a) declare that his functions shall, to such extent as may be specified in the Proclamation, be exercised by him in his discretion, (b) assume to himself all or any of the powers vested in or exercisable by any federal body or authority.

The Proclamation may contain such incidental and consequential provisions as may be necessary or

desirable for giving effect to the objects of the Proclamation. The operation of any provision of the Act relating to any federal body or authority may be suspended in whole or in part, excepting the provisions that relate to the Federal Court

Such a Proclamation has to be communicated forthwith to the Secretary of State and laid by him before each House of Parliament. It will cease to operate at the expiration of six months, unless Parliament by resolutions approves its continuance for further periods; but in no case shall it continue for more than three years

Laws made by the Governor-General in virtue of the powers assumed by him by such a Proclamation shall have effect for two years after the Proclamation has ceased to have effect. But they may be repealed sooner or re-enacted by the legislature. Thus all the powers of the Federation can be taken over by the Governor-General in a grave emergency

4. The Counsellors and Financial Adviser

APPOINTMENT AND NUMBER For the administration of what has been described as the Reserved part of the Federal Government, section 11 of the Act has provided for the appointment of a separate set of officials. They are to be known as Counsellors. They are to be appointed by the Governor-General and their number is not to exceed three. Their salaries and conditions of service will be prescribed by His Majesty

PROBABLE COMPOSITION It will be seen that the appointment of Counsellors is not made obligatory upon the Governor-General, though of course it is unthinkable that he would not appoint them. The tenure of their office is not fixed by law nor are their qualifications defined by it. The Act has not said that they will form a Council and therefore they will have no corporate existence as the Executive Council today has or the federal ministry may come to have. Functions in respect of the Reserved departments—that is defence, ecclesiastical affairs, external affairs except relations

with the Dominions, and tribal areas—are to be exercised by the Governor-General in his discretion; but he must have the assistance of men of experience, talent and representative character in the performance of the task. It is therefore not unlikely that most of the Counsellors will be members of the ICS of long standing and service. Whether an Indian will be appointed to the post can be shown only by experience. But in any case, the Counsellors' opinions are not binding upon the Governor-General and they are not intended to exercise any constitutional restraint over him.

FINANCIAL ADVISER In addition to these Counsellors, the Governor-General is empowered by section 15 to appoint a Financial Adviser. It will be his duty to assist the Governor-General in the discharge of his Special Responsibility for safeguarding the financial stability and credit of the Federal Government, and also to give advice to the Federal Government upon financial matters if he is consulted. He will hold office during the pleasure of the Governor-General, who will also prescribe his salary and other conditions of service. It is provided that after the appointment of the first Financial Adviser, the Governor-General should consult his Ministers in making subsequent appointments to the office.

The Financial Adviser must not be confounded with the Finance Minister, who will be in charge of the Finance Department, and as a member of the federal ministry will be responsible to the legislature for his actions. What exactly will be the relationship of the Financial Adviser to the constitutional machine, whether his presence will facilitate the exercise by the Governor-General of his special powers, can be seen only by experience. But it is possible that the creation of this new office may bring about some conflict of jurisdiction and complicate the process of government in the federal sphere.

COMMANDER-IN-CHIEF Though defence is a Reserved subject under the Governor-General, the Act has made specific provision for the appointment of a Commander-

in-Chief of His Majesty's Forces. Section 2 lays down that he will be appointed by His Majesty by warrant under the Royal Sign Manual, and section 232 lays down that his pay and allowances and other conditions of service will be such as His Majesty-in-Council may direct

5. The Council of Ministers

SCOPE FOR MINISTERIAL AUTHORITY For the administration of the subjects which have not been Reserved, section 9 of the Act provides that there shall be a Council of Ministers. They will aid and advise the Governor-General in the exercise of his functions except when he is required to act in his discretion. But the scope for ministerial authority will not be large because, as has been pointed out already, the discretionary powers of the Governor-General are very wide and include the management of such important subjects as defence and external affairs, and the numerous reservations, safeguards and exceptional powers with which the Governor-General is invested under the Act.

APPOINTMENT, QUALIFICATIONS AND SALARY The Ministers will be chosen and summoned by the Governor-General, but as they are to be responsible to the federal legislature he will not have an unfettered choice. He must accept those who have a clear majority of votes in the legislative chambers. There can be no academic or any other specific qualifications prescribed for Ministers, but they must be members of one or the other house of the legislature and have the solid support of the majority of their votes. Ministers would in fact be prominent members of the party in power and many of them would be among the foremost political leaders of the country. Their salaries will be fixed by an act of the legislature though the amounts paid to individual Ministers would not be annually voted at the time of the budget. In fact, they have been put in the non-votable list. The salary of a Minister will not be varied during his term of office. If a Minister has to be censured, it cannot be done by proposing a cut in his salary

at the time of the passing of the budget ; a direct motion of no-confidence would have to be moved for that purpose.

COLLECTIVE RESPONSIBILITY The Ministers will be sworn in as a council and the Governor-General may preside over it in his discretion. There is no mention of the office of Prime Minister in the Act, but the Instrument of Instructions to the Governor-General says that the latter, in the selection of his Ministers, should consult the person who in his judgement is most likely to command a stable majority in the legislature. This implies that there will be a leader of the Ministry who will function as the Prime Minister. The same Instruction adds that the Ministry should include, as far as possible, representatives of the federated States and members of the important minority communities, and that it should be able collectively to command the confidence of the legislature and be possessed of the sense of joint responsibility. The parliamentary system and party government may thus be introduced in the federal sphere. However, difficulties may be experienced in maintaining the homogeneity and discipline of a party and at the same time including in the Ministry representatives of the minorities and the States in spite of the fact that such persons are not members of the party concerned and are beyond its direct control.

ALLOCATION OF PORTFOLIOS. The number of Ministers is not to be more than ten. No such limit has been put down in the case of the provincial Ministers. Allocation of portfolios will be technically the duty of the Governor-General though in practice it will devolve upon the Prime Minister. However, the rules of business must include provisions requiring Ministers and secretaries to Government to transmit to the Governor-General all the information about matters specified in the rules, or any other information that may be required by him. They must also bring to his notice any matter which involves or is likely to involve any of his Special Responsibilities.

6. The Working of Dyarchy

VIEW OF THE JOINT PARLIAMENTARY COMMITTEE. The experiment of dyarchy was tried in the provinces for sixteen years after the introduction of the Montford Reforms and was proved to be incapable of yielding really satisfactory results. It was therefore given up in favour of provincial autonomy. The same system is however proposed for the federal centre. The question that naturally arises is whether it has chances of better success in the new sphere that is designated for its operation. The Joint Parliamentary Committee were clearly of the opinion that so long as some political powers are to be withheld from India, such division in the functions of government would be inevitable. But they urged that, given the desire and the will, even a divided government of this type can work smoothly and give excellent results.

DIFFERENT STATUS OF COUNSELLERS AND MINISTERS The Counsellors and Ministers in the Federation of India will have a fundamentally different status. The former will be bureaucratic in composition and outlook and will not be subordinate to the legislature. The latter will be the representatives and servants of the public and fully responsible to the legislature. The spheres of their activities have been marked out and defined. But it is recognized that, in the nature of things, there cannot be a watertight differentiation between the spheres and functions of government. Hence extraordinary and over-riding powers have been given to the Governor-General to settle all points of dispute and administrative difficulties and deadlocks.

COMMON CONSULTATION RECOMMENDED It is also recommended that the Reserved and Transferred halves should not look upon themselves as strangers to each other or even as rivals of each other. The working of the government should be based on the concept that they are partners in a common cause and ought to take each other into confidence. The practice of mutual consultation and exchange of opinion and advice bet-

ween them must become common, so that they can effectively influence each other's policies.

INSTRUCTIONS TO THE GOVERNOR-GENERAL The Governor-General is specially instructed in his Instrument of Instructions¹ to inculcate the spirit and tradition of collective responsibility among his Ministers, and also to encourage the practice of joint consultation between himself, his Counsellors and Ministers. This is particularly emphasized in the case of the department of defence, the views of Ministers should be ascertained when the appointment of Indian officers to the Indian forces or the employment of Indian forces on service outside India are concerned. It is also one of the Instructions that the federal department of finance should be kept in close touch with the finance of defence, and that the estimates of proposed expenditure for defence should be laid before the legislature after consultation with the Finance Minister and the Ministry.

INHERENT DEFECTS OF DYARCHY These Instructions are quite clear and specific, and if carried out in letter and spirit will give very salutary results. But the equipoise set up by dyarchy is extremely delicate. The factor of personal temperament is vital in its operation. The compromise between incompatibles that it contemplates and embodies is so precarious that the unintended shock of straightforward and simple action may suddenly throw the whole mechanism out of gear. Apart from the fact that India cannot be reconciled to the ideal of a truncated and heavily safeguarded self-government, the scheme of dyarchy cannot but evoke a feeling of scepticism on account of its inherent defects and conflicting loyalties.

VEXATIOUS RESERVATIONS Apart from these evils which are inseparable from the dyarchical structure, the degree of progress contemplated in the new constitution is vitiated by the addition of reactionary encumbrances. The transfer of political power into the hands

¹ For a further explanation of the Instrument of Instructions, see p. 162.

of Indians is likely to be more apparent than real. It is accompanied by reservations and safeguards which are all-pervasive in their conception and overwhelming in their operation. A most strenuous effort seems to have been made to discover every possibility of what, in the Englishman's view, may be an abuse of power by Indians. The vigorous exposition of this point by the Joint Parliamentary Committee leaves no doubt about the Englishman's hopes and fears in this respect. The reader is inevitably led to feel that Parliament is eager to perform an impossible feat. It seems to be desirous of parting with power and at the same time retaining it.

XVI

THE FEDERAL LEGISLATURE

1. The Bicameral System

It is a matter of controversy whether two legislative chambers are necessary in unitary states, though they exist in practically all of them. Since the Act of 1919 India has been living under the bicameral system.

THE PURPOSE OF TWO CHAMBERS The method of two chambers is generally believed to be indispensable in the working of a federation. It is a very convenient mechanism for symbolizing the essential equality of the federating units and also their inevitable inequality in population and size. The upper house in a federation represents the constituent states as states, and as far as possible its seats are equally or approximately equally distributed among all of them. Here the smaller states are in a privileged position, they are guaranteed against tyrannical molestation and persecution by the bigger ones. On the other hand, the lower house represents the total population of the federation and its seats are distributed among the states in proportion to their numbers. Here the bigger states are protected from irresponsible caprice or jealousy on the part of the smaller ones. No federal law can be finally passed unless it is assented to by both the houses.

2. The Chambers

THEIR CONSTITUTION. Chapter III of Part II of the Government of India Act and the First Schedule prescribe the constitution, powers and procedure of the federal legislature in India. The upper chamber will be known as before as the Council of State; the lower chamber will be known as the House of Assembly. The table on page 167 shows their composition.

DIRECT AND INDIRECT ELECTION. Election to a legislature can be either direct or indirect. In the former case,

COMPOSITION OF THE FEDERAL LEGISLATURE

Name	British Indian Representatives			Representatives of Indian States nominated by their Rulers	Total
	Elected	Chosen by the Governor General	Total	Not more than	Not more than
Council of State	150	6	156	104	260
House of Assembly	250		250	125	375

territorial and other constituencies are formed specifically for the purpose of sending representatives to a legislative chamber, and persons chosen by them are permitted straightway to take their seats in it. In indirect elections at least one more intermediary is added. Representatives who sit in the legislature under this system are already elected members of some other body like a municipality, a local board, a local legislature or a specially constituted electoral college. There is first of all an election of the electors and then finally election to the legislature.

ADVANTAGES OF DIRECT ELECTION The method of direct election has been commended by political writers. It establishes immediate contact between the legislator and the citizen and brings home to the former his responsibility as an elected representative. If the will of the demos is to be effectively expressed and enforced, there should be no complication or obstacle created by the presence of legalized middlemen. Indirect election may make the electoral machinery extremely clumsy and obscure to the masses, and cause on the whole more annoyance than convenience. Worse still, it offers great scope for political corruption, dishonesty and bribery.

ADOPTION OF THE INDIRECT METHOD The indirect system existed in India even after the Morley-Minto

Reforms but it was scrapped by the Joint Parliamentary Committee which reported on the Bill of 1919. Since that time, elections to all legislatures in India, both central and provincial, have been direct. The White Paper of 1933 had recommended the continuance of the same system. However, the Joint Parliamentary Committee which reported on it a year later took the opposite view and recommended that for both the chambers of the federal legislature the method of election should be indirect.

The Indian public protested against this retrograde move, and Parliament was at last persuaded to make a small concession. The Act lays down that elections to the upper chamber, i.e. the Council of State, should be direct; those to the lower chamber, i.e. the House of Assembly, should be indirect. This is exactly the opposite of the accepted constitutional principle and practice that the lower and popular chamber should be directly elected by the people, and the upper chamber which represents the federating units may be elected indirectly.

REASONS FOR THE ADOPTION The chief reason given for this reactionary departure from the White Paper proposal was that in an extensive and populous country like India, direct election was bound to lead to one of two evils. Either the constituencies would have to be excessively large or the number of members of the legislature would have to be abnormal and unwieldy. The committee felt that neither of the alternatives could be accepted.

THEY ARE NOT CONVINCING. However, it could be contended that the maximum numerical strength of the legislature as prescribed in the Act could bear some increase without creating undue confusion or inconvenience. The territorial areas of the U.S.A., Canada and Australia are much bigger than the area of India; and at least in the U.S.A. the number of voters is not smaller than the total population proposed to be enfranchised in this country. Yet in none of those federations has it been found necessary to adopt the indirect,

in preference to the direct, system of election for the lower house. The latter may add to the difficulty of constitutional working, but the former produces the more dangerous result of diluting democracy itself.

ELECTIONS TO THE COUNCIL OF STATE The seats in the Council of State assigned to a province will be distributed among territorial constituencies which will be general and communal, the latter for Mussalmans and Sikhs. For election to seats reserved for women, all members of the provincial legislature, men and women, will be electors. As the number of Anglo-Indians and Europeans and Indian Christians in an individual province will be small, special electoral colleges will be formed for the whole of British India for election of their representatives to the Council of State. The colleges will be composed of such Anglo-Indians, Europeans and Indian Christians respectively as are members of the Legislative Council of the province or of its Legislative Assembly. For seats allotted to the 'scheduled' castes, persons of those castes who are members of the provincial legislature will be electors.

A high property qualification will be required for the right to vote at elections to the Council of State. It has yet to be determined. But it will confer the vote on only a small minority of aristocrats and industrial and commercial magnates.

ELECTIONS TO THE ASSEMBLY Members of the House of Assembly assigned to a province will not be elected directly by constituencies, territorial and communal, specially formed for that purpose in the provincial area. The Legislative Assembly of the province will be the body of electors. Its Muslim and Sikh members will elect the Muslim and Sikh representatives, those holding general seats in it will vote in the election to the general seats of the Federal Assembly. Women members will be elected by an electoral college of all women who are members of the Legislative Assembly of any province. Anglo-Indian, European and Indian Christian seats will be filled by persons who are elected by electoral colleges consisting of members of those com-

munities who are in the provincial Legislative Assemblies.

Both the federal legislatures will have elected presidents, the Assembly president being known as the Speaker.

TENURE The Federal Assembly will have a tenure of five years, but may be dissolved earlier. The Council of State will be a permanent body not subject to dissolution. One-third of the total number of its members will retire every three years, and the term of an individual member will be nine years. The details of the initial retirements have been given in the schedule

POWERS The two chambers will have legislative, administrative and financial powers as at present and will be co-ordinate in almost all respects. The voting of grants of expenditure in the votable portion of the budget will not be an exclusive privilege of the lower house as at present, but has been extended to the Council of State. Joint sittings of the chambers will be held whenever there is a difference of opinion between them on a legislative or financial issue.

The following tables give the allocation of seats in the Council of State and the House of Assembly.

COUNCIL OF STATE REPRESENTATIVES OF BRITISH INDIA

Province or community	Total seats	General seats	Seats for scheduled castes	Sikh seats	Mohammedan Seats	Women's seats
Madras ..	20	14	1	..	4	1
Bombay ..	16	10	1	..	4	1
Bengal ..	20	8	1	..	10	1
United Provinces ..	20	11	1		7	1
Punjab .	16	3		4	8	1
Bihar .	16	10	1	.	4	1
Central Provinces and Berar ..	8	6	1		1	.
Assam ..	5	3	.	..	2	.
North-West Frontier Province ..	5	1	..	.	4	.
Orissa .	5	4	.	..	1	..
Sind .	5	2		..	3	
British Baluchistan ..	1		..	.	1	..
Delhi .	1	1		.	.	
Ajmer-Merwara .	1	1	.	..		
Coorg .	1	1		.	.	.
Chosen by the Governor General in his discretion .	6			.	.	.
Anglo-Indians .	1		..		.	
Europeans .	7	.		.		
Indian Christians .	2	..	.	.	..	..
Total .	156	75	6	4	49	6

THE FEDERAL ASSEMBLY: REPRESENTATIVES OF BRITISH INDIA

Province	Total seats	Total of general seats	General seats reserved for scheduled castes	Sikh seats	Mohammedan seats	Anglo-Indian seats	European seats	Indian Christian seats	Seats for commerce and industry	Seats for landholders	Seats for labour	Women's seats
Madras	37	19	4	..	8	1	1	2	2	1	1	2
Bombay	30	13	2	..	6	1	1	1	3	1	2	1
Bengal	37	10	3	..	17	1	1	1	..	1	2	1
United Provinces	37	19	3	..	12	1	1	1	..	1	1	1
Punjab	30	6	1	6	14	..	1	1	..	1	1	1
Bihar	30	16	2	..	9	..	1	1	..	1	1	1
Central Provinces and Berar	15	9	2	..	3	..	1	..	..	1	1	..
Assam	10	4	1	..	4	..	..	..	..	..	1	..
North-West Frontier Province	5	1	..	..	1	..	..	..	..	..	..	..
Orissa	5	4	..	..	3	..	..	..	..	..	..	..
Sind	5	1	..	..	1	..	..	..	..	..	..	..
British Baluchistan	1	..	..	..	3	..	..	..	..	..	..	..
Delhi	2	1	..	..	1	..	..	..	..	..	..	..
Ajmer-Merwara	1	1	..	..	..	..	..	..	..	..	1	..
Coorg	1	1	..	..	..	..	..	..	..	..	..	..
Non-Provincial seats	4	..	..	..	..	..	..	..	3	..	..	..
Total ..	250	105	19	6	82	4	8	8	11	7	10	9

STATEMENT SHOWING THE NUMBER OF SEATS ASSIGNED TO THE
BIGGER STATES IN THE FEDERAL LEGISLATURE

Name of State				No of seats in the Federal Council of State	No of seats in the Federal Legislative Assembly
Hyderabad	...	..		5	16
Mysore	.	..	.	3	7
Kashmir	.	..	..	3	4
Gwalior	..	...	..	3	4
Baroda	.	..	.	3	3
Kalat	...	.	.	2	1
Rampur	.	..	..	1	1
Benares	.	.	..	1	1
Travancore	..	..		2	5
Cochin	..			2	1
Pudukkottai	}	..		1	1
Banganapalle					
Sandur					
Udaipur	...	..	..	2	2
Jaipur	.	.	..	2	3
Jodhpur	.	.	.	2	2
Bikaner	.	.	.	2	1
Alwar	.	.	.	1	1
Bharatpur	.	.	.	1	1
Indore	.	.	.	2	2
Bhopal	.	...	.	2	1
Rewa	..			2	2
Jhabua	}	..	.	1	1
Sailana					
Sitamau					
Cutch	..	.	...	1	1
Idar	..	..	.	1	1
Nawanagar	...			1	1
Bhavnagar	..	...	...	1	1
Junagarh	..	...	...	1	1
Rajpipla	}	..	..	1	1
Palanpur					
Dhrangadhra	}	..	..	1	1
Gondal					
Porbunder	}	.		1	1
Morvi					

STATEMENT SHOWING THE NUMBER OF SEATS ASSIGNED TO THE
BIGGER STATES IN THE FEDERAL LEGISLATURE

Name of State			No of seats in the Federal Council of State	No of seats in the Federal Legislative Assembly
Cambay	}	...	1	1
Dharampur				
Balasimore	}	..	1	1
Bansda				
Sachin	}	..	1	1
Jawhar				
Danta	}	..	1	1
Dhrol				
Limbdi	}	..	1	1
Wadhwan				
Rajkot	}	..	2	1
Kolhapur				
Sangli	}	..	1	1
Sawantwadi				
Janjira	}	..	1	1
Mudhol				
Bhor	}	..	1	1
Jamkhadi				
Miraj Senior	}	.	1	1
Miraj Junior				
Kurundwad Senior	}	.	1	1
Kurundwad Junior				
Akalkot	}	.	1	1
Phaltan				
Jat	}	.	1	1
Aundh				
Ramdurgh	}	..	2	2
Patiala				
Khairpur	}	..	1	1
Kapurthala				
Nabha	}	..	1	1
Faridkot				
Malerkotla	}	..	1	1
Loharu				
Cooch Bihar	}	..	1	1
Tripura				
Manipur	}	..	1	1
Mayurbhanj				
Sonepur	}	..	1	1

3. Effect of the Changes

It is necessary to explain the probable effects of the changes that have been made in the constitution and powers of the central legislature.

DISAPPEARANCE OF THE NOMINATED BLOC The present nominated and official bloc will vanish almost completely, except for six seats in the Council of State. This is a wholesome disappearance of that bureaucratic control of voting which offends against the fundamentals of democratic polity. It may be argued that the rigidity of party discipline and the loss of individuality that it involves are equally serious defects of democracy. But it cannot be forgotten that those installed as party leaders occupy that position by the choice of their followers and are liable to deposition and dismissal by them.

THE STATES' REPRESENTATIVES. However, much of the good that will result from the withdrawal of the nominated and official bloc may be undone by the inevitable introduction of a new element. The delegates from Indian States will form a substantial portion of both houses. The law does not prescribe, though it does not prohibit, the election of any of them by the subjects of States. They are to be nominated by their rulers. It is probable that some of the princes will cause constituencies to be formed in their States and will allow them to elect representatives to the federal legislature. However, such a self-imposed constitutional restraint will be the exception and not the rule. That it will be observed generally is an unwarranted hope.

THEIR UNDEMOCRATIC CHARACTER Thus, a majority of the Indian State representatives will not be elected by the people of the States. They will be nominees of absolute masters and instruments of their will. And in the delicate environment of paramountcy, the autocratic masters themselves may prove to be unduly susceptible to the influence of the Department of the Crown's Representative.

AN INEVITABLE PHASE However, on the assumption that the future constitution of the country must be an all-India federation including the Indian States, the incongruity caused by the presence of a large non-elected element in what is intended to be a representative chamber has to be faced, otherwise the rulers of States will not accede to the federation. There is comfort in the thought that such a stage, though inevitable, is likely to be temporary and transitional. It is more than probable that the closer impact between the dynamic ideals and activity of British India and the static outlook and life of the States will accelerate political consciousness in the subjects of the latter and ripen in their rulers the healthy spirit of progressive constitutionalism.

COUNCIL OF STATE WOULD BE THOROUGHLY REACTIONARY. The Council of State will be an assemblage of vested interests, reactionary oligarchs and conservative politicians. The franchise for its election will be exceptionally high, 40 per cent of its membership will be constituted by State nominees. Besides it will be a permanent body and therefore will not be subject to that wholesome cleansing which is periodically brought about by a dissolution and general election. The abnormally long term of nine years for its members will breed irresponsibility and defiance in the legislators, because they will not be restrained by the thought of having to face their masters, the electors, at short intervals.

Upon this narrow-based upper chamber the Act of 1935 has conferred a power which in a democratic polity is an exclusive privilege of the lower chamber. The voting of grants of expenditure was denied to the Council of State by the Act of 1919. But the federal counterpart of that chamber will be possessed of that privilege. In short, everything seems to have conspired to make the upper chamber a strong instrument for checking the advance of democracy.

THE FEDERAL BUDGET The federal budget will be divided into votable and non-votable items as at present, and over 70 per cent of the total expenditure will be

beyond the control of the legislature. In this respect, there is no change for the better. The absence of financial power imparts an air of unreality to responsible government and tends to reduce it to a mockery.

POLITICAL CONSCIOUSNESS AND THE PRINCES It is pointed out by the advocates of federation that all these defects, though real, may not prove so serious in actual practice as hostile critics may be led to imagine. For instance, the attempt to 'mally' democratic British India and feudal princedom in a single federation will be very difficult. Still, it is inevitable that as political consciousness grows and agitation among the States people for political rights becomes more and more intense, Indian Princes will have to assume the status of constitutional rulers like the monarchs of Europe. Paramountcy cannot be interpreted to mean that Great Britain has the duty of supporting a ruler in denying to his own subjects the very rights which have been established by the authority of Parliament throughout British India. Such an interpretation was authoritatively repudiated in Parliament. In fact the relationship established by the Act between British India and the States may not prove to be absolutely inflexible.

EMPHASIS ON RESPONSIBILITY With regard to the special powers and responsibilities of the Viceroy, it is stated that as the federal scheme rests not so much on the old system of dyarchy but on the principle of responsible government, the initiative over the whole field of federal government, except in defence and foreign affairs, will pass to the Ministry and gradually to the legislature. Even in the field of defence and foreign affairs, there will be no arbitrary division because no Viceroy will wish to certify the military budget. He will inevitably do his best to reach an agreement with his Ministry, for no defence policy can be effective which does not command the loyal co-operation of public opinion and the administrative machine.

NEED FOR CONSTITUTIONAL UNITY Stress is also laid on the fact that federation is the only means of combining unity and national self-government with local diversity.

and autonomy in so vast a country as India. It is of the utmost importance that the whole country should have not only a cultural but a constitutional unity. Its organically integrated character must be maintained, particularly after the creation of self-governing provincial divisions. Otherwise separatist influences will become dominant and the result will be the creation of smaller sovereignties which may be constantly at war with each other politically and economically, and may reduce the country to chaos.

COMMON ECONOMIC POLICY It is further argued that the commercial and industrial development of a sub-continent like India is in many respects prejudiced by the absence of uniformity at present existing in, for example, company law, banking law, law of copyright and trademarks and the like. It is most desirable that there should be established over the whole fiscal field the greatest possible degree of unity and uniformity. In the determination of tariff policies which affect every part of India, Indian States must, in fairness to them, be allowed to have an effective voice.

The Indian critic does not deny the truth of these contentions. In fact, it is too obvious to be disputed. But the acceptance of the theoretical plea for the constitutional unity of India is not equivalent to agreeing that the particular federal structure outlined in the Act is not vitiated and deformed in such a way that what is intended to be a remedy will actually be worse than the disease.

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XVII

THE FEDERAL COURT

A SUPREME COURT VITALLY NECESSARY IN A FEDERATION.
A supreme court is one of the essential components of a federation. Without such a court, no federal constitution can work adequately and smoothly. When different spheres of activity have been demarcated for the Central and Provincial Governments and when specific duties have been allocated to each one of them, a superior tribunal is inevitably required to watch whether the distribution is being properly respected and carried out in practice. If any party feels that it has been wronged, a remedy for getting redress must be provided. The supreme court is intended to entertain all such complaints and, after judicial investigation, to decide how far they are legitimate and genuine. The orders that it issues are final and binding upon all parties. It is a matter of recent history that the Federal Court of the U. S. A. held many provisions of the National Recovery legislation, passed by the American Congress on the initiative of President Roosevelt, to be *ultra vires* of the American Constitution.

THE NATURE OF ITS DUTIES The Federal Court has thus a special mission. It stands as the final arbiter in disputes between the federating units, or between them and the Central Government. The verdict that it pronounces is obligatory on all concerned. It is the duty of this court to interpret the language of the constitution whenever it is felt to be ambiguous and vague. It can sit in judgement upon all executive action if it is alleged to be contrary to the provisions of the federal structure. Unlike courts of justice in a unitary state, the Federal Court can question the legality of Acts passed by the central and provincial legislatures in the light of the competence of those bodies to pass them. Controversies about jurisdiction are finally settled by that authority.

The Act of 1935 has provided for the creation of the Federal Court of India. Its constitution and powers have been elaborately prescribed in sections 200-18. It was constituted on 1 October 1937 and has actually been functioning since then. It consists of the Chief Justice and two other puisne judges. Its headquarters is to be Delhi though it may meet in other places also.

ITS CONSTITUTION The Federal Court, according to the Act, is to consist of a Chief Justice and not more than six puisne judges. They are to be appointed by His Majesty and can hold office until they attain the age of sixty-five. A judge is of course free to resign his post and may be removed from office by His Majesty on the ground of misbehaviour or infirmity of mind or body if the Privy Council reports to that effect.

QUALIFICATIONS OF JUDGES A person is not qualified to be a judge of the Federal Court unless he (i) has been for at least five years a High Court judge in British India or in a federated State, or (ii) has qualified as a barrister or advocate in Britain and is of at least ten years' standing, or (iii) has been for at least ten years a pleader of a High Court in British India or in a federated State. The Chief Justice must be a barrister or an advocate of at least fifteen years' standing.

The salaries and allowances of the judges are to be prescribed by His Majesty-in-Council and are charged upon the revenues of the Federation. They are now fixed at Rs 7,000 per month for the Chief Justice and Rs 5,500 per month for the other judges.

ORIGINAL JURISDICTION. The Federal Court has exclusive original jurisdiction in any dispute between any two or more of the following parties, that is, the Federation, any of the provinces, or any of the federated States, in so far as the dispute involves any question about legal rights.

APPELLATE JURISDICTION An appeal will lie to the Federal Court from the judgement of a High Court in British India if the latter certifies that the case involves a substantial question of law as to the interpretation of the

Act of 1935 or any Order-in-Council made thereunder.¹

The federal legislature may provide by an Act that in certain civil cases where the amount involved in the dispute is not less than Rs 50,000, an appeal will lie to the Federal Court from the judgement of a High Court in British India. Direct appeals to the Privy Council in such cases may then be abolished.

An appeal may be made to the Privy Council against any judgement of the Federal Court given in the exercise of its original jurisdiction, and in any other case by leave of the Federal Court or of the Privy Council.

UNIFYING INFLUENCE The central judicature exerts a very salutary unifying influence on a nation which is composed of autonomous units. It is interesting to refer here to some of the observations made by the Chief Justice of India at the inaugural session of the Court which was held in the Princes' Chamber in New Delhi in December 1937, which briefly outline the nature of the services which this new judicial tribunal is expected to render.

REMARKS OF THE CHIEF JUSTICE The Chief Justice said that the Federal Court is the first all-India court of law. Like similar courts in other countries it would become at once the crucible in which the flux of current and political thought is tested and refined, and the anvil on which the more stable and permanent elements of it are hammered into shape, to take their place in that armoury of ideas with which each generation seeks to solve its own problems.

Independent of Governments and Parties, the Court's primary duty is to interpret the constitution. It would be its endeavour to look at the constitution, not with the cold eyes of the anatomist, but as a living and breathing organism which contains within itself, as all life must, the seeds of future growth and development. Its canons of interpretation would not hamper the free evolution of those constitutional changes for which the Law provided no sanction, but in which the political genius of a people can find its most fruitful expression.

¹ Recently, the validity of certain ordinances issued by the Governor-General under the Defence of India Act was questioned and the matter went up to the Federal Court.

XVIII

FEDERAL FINANCE

1: Centralization before 1870

THE GOVERNMENT OF INDIA WAS SUPREME Since the passing of the Regulating Act in 1774, British India has been a unitary state As has already been pointed out, till the introduction of provincial autonomy in 1937 all civil and military authority over the British Indian territories was vested, legally speaking, in the Governor-General-in-Council Complete control over the revenues and expenditure of the whole area comprised in British India was part of this general supremacy defined for the Government of India by successive Acts of Parliament Evidently, finance could not be separated from politics Both are woven together in the fabric of national life

NO SEPARATE FINANCE FOR THE PROVINCES. Under such a centralized arrangement, the provinces had no independent financial existence They could not evolve their own policies and projects of reform and carry them out with their own means and authority All sources of income belonged to the Government of India, all revenues collected in any part of the country were credited to their treasury They allotted in their discretion moneys for provincial expenditure and decided the purposes for which the amounts should be utilized. Thus the Provincial Governments were merely the executive agents of the Central Government, and mechanically carried out its orders

AN UNWIELDY BURDEN UPON THE CENTRAL GOVERNMENT Such a wholesale centralization in a vast country like India imposed a heavy burden of financial administration upon the Central Government The authorities in the provinces were naturally indifferent about the efficient collection of taxes and about economy in expenditure, because they had no effective determining

voice in either. There was no incentive to equate local requirements and provision of public service to the ability to raise local revenue and the liberty to administer local affairs. With the continuous increase in governmental functions in accordance with modern standards and objectives of state activity, a highly centralized financial system became almost intolerable. It caused an enormous strain and embarrassment to the Government of India, and genuine grievances and discontent among the provincial units. Relief was urgently needed by the one, responsibility was keenly desired by the other. Both could be simultaneously achieved by a policy of decentralization even though the unitary character of the state was maintained.

2 Decentralization, 1870-1919

MAYO'S SCHEME Lord Mayo took the first steps in initiating a scheme of decentralized administration and finance in 1870. He delegated certain departments to the provinces for management. Police, jails, education, medical relief, hospitals, sanitation, roads and communications and a few other departments were put in this category. These were all spending departments, but whatever receipts were obtained from them were allowed to be taken by the provinces, and in addition, a fixed grant of money, or 'dole', was made to each province to make up the deficit in its expenditure.

ITS EXTENSION This policy of delegation was further extended by Lord Lytton and Lord Ripon. The number of departments assigned to the control of the provinces was increased, and a corresponding addition was made to their resources. The lump contribution, or 'dole', made to each province was abolished, and instead, they were given a share in the revenues of certain departments. These were called the divided heads, and included subjects like income-tax, land revenue, excise, registration and irrigation.

CONTRACTS WITH PROVINCES Contracts were made on this basis with each province, and they were revised and renewed at the end of every five years. This gave

rise to some uncertainty and lack of continuity in provincial finance, and therefore Lord Curzon's Government declared that the contracts made in 1904 would be considered to be quasi-permanent. Lord Hardinge went a step further, and declared that the contracts made in the year 1912 would be taken to be permanent.

THREE TYPES OF SUBJECTS Thus, on the eve of the Montford Reforms, there were three different groups of administrative departments. One consisted of subjects of all-India importance like defence, customs, railways, coinage and posts and telegraphs, and was controlled exclusively by the Government of India. The second group contained what were known as the Provincial heads and was given for management to the provinces under certain conditions. The last group was formed by what were called the Divided heads. Revenue from them and administrative control over them were shared in a certain proportion between the Central and Provincial Governments.

NO PRINCIPLE OF FEDERALISM It must be emphasized that the process of decentralization initiated by Lord Mayo and developed thereafter by his successors was purely a matter of internal arrangement between the Government of India and the Provincial Governments. It did not require the sanction of Parliament and was not enacted by parliamentary legislation. The scheme did not owe its origin to the ideals of federalism, it was inspired and permitted only by considerations of administrative convenience and efficiency. The Central Government did not abandon any of their financial or political powers, but merely transferred them to subordinate agents in the interests of division of labour. Their ultimate superiority, however, remained unaffected and unquestioned.

3. After the Montagu-Chelmsford Reforms

INTRODUCTION OF PARTIAL SELF-GOVERNMENT The Montford Reforms attempted to implement the promise contained in Mr Montagu's Announcement of August 1917. A beginning of responsible government was to

be made in India and the experiment was to be started in the provincial sphere. It was obvious that what were intended to be partially self-governing units should have considerable freedom and independence in their own financial matters. The control of the Central Government over the provinces required to be substantially relaxed.

Two Lists The Act of 1919, even though it did not visualize the formation of a federated India, permitted the framing of devolution rules which would secure to the provinces a definite sphere for their own free judgment and action. Under these rules, two lists of subjects were made, one exclusively for the Central Government and the other for the provinces. The Divided heads of previous years were abolished. Income-tax was added to the central list, and land revenue, excise and registration were added to the provincial list.

PROVINCIAL CONTRIBUTIONS As this division was expected to produce a deficit in the budget of the Central Government, the provinces were called upon to make contributions under what is known as the *Meston Award* for the purpose of wiping out the deficit. But these contributions were very unpopular and were abolished within a few years. The Central Government was then expected to balance its budget from its own sources.

The power of borrowing money by issuing loans was now conceded to the provinces with certain restrictions. A few sources of taxation were also allocated to them.

DEFECT OF THE MONTFORD PLAN The great defect of this distribution of departments was that it allotted to the centre all the elastic and expanding sources of income and left to the provinces items of taxation which were both inelastic and unpopular. The exchequer of industrially and commercially advanced provinces could not benefit by the growth of their income because income-tax and customs were central subjects. On the other hand, the Indian public had long been demanding a reduction in land revenue, and the adoption of a policy of total prohibition which would result in an extinction

of the excise revenue. And these very sources of income were made available to popular Ministers for carrying out their programmes of nation-building activity.

MERIT OF THE MONTFORD PLAN But it must be said to the credit of the Montford plan that it constituted a definite advance, in practice if not in law, towards a federal system. It endowed the provinces with a distinct, if not inviolable, personality and gave them considerable independence in financial matters. The Act of 1919 did not, indeed, itself prescribe the allocation of central and provincial subjects, but left it to be determined by Rules made under the Act. But, as the Joint Parliamentary Committee has stated, though the separation of revenues then effected was, in legal form, merely an act of statutory devolution which could be varied by the Government of India and Parliament at any time, nevertheless, from the practical financial point of view, a federal system of finance can be said to have come into existence after the Montford Reforms. It has been further modified and legally incorporated as an integral part of the constitutional structure created by the Act of 1935.

4. Federal Finance under the Act of 1935

DIFFICULTY OF ALLOCATING REVENUES. The task of distributing sources of income between the centre and the provinces in a federation presents great difficulties. The demands of both are urgent. The duties that they are called upon to perform are equally vital and beneficial to the whole nation.

For example, the responsibility of defence and foreign relations is entrusted to the Central Government, and its importance to the country cannot be exaggerated. It is a very expensive and onerous charge. Several matters of internal administration which are common to the whole federal area and which require a uniformity of outlook and action are also managed by the same authority. For the efficient discharge of all these obli-

gations the Federal Government must be supplied with adequate funds.

On the other hand, the Provincial Governments are directly concerned with subjects like education, sanitation and public health, which bring about the material welfare and progress of the community. They have an almost inexhaustible field for the development of social services. In fact, the positive benefits of a civilized corporate life, the tangible good of the very institution of government, are realized to a great extent in the provincial sphere. The monetary appetite of the provinces will therefore be insatiable.

A balanced compromise has to be effected between such conflicting claims, and reasonable satisfaction given to both the parties. The body of tax-payers is of course the same, whether the tax-imposing authority is the Federal Government or the province.

Sections 136-49 of Part VII of the Act are devoted to the question of finance. Other sections, dealing with the Reserved subjects in the Federation, Indian railways, the High Commissioner for India, etc., have also a direct bearing on national expenditure because they impose certain financial responsibilities on the federal exchequer. The scheme of the allocation of revenues between the Federation of India and its constituent units as contemplated by the Act is based on the following principles.

SCHEME OF THE ACT Revenues derived from items enumerated in the Federal Legislative List will be allocated to the Federation. Revenues derived from items enumerated in the Provincial Legislative List will be allocated to the provinces. There are several items in the Concurrent Legislative List which are capable of yielding income by being taxed, but their position does not seem to have been properly clarified in the Act.

FEDERAL SOURCES OF REVENUE The following are among the sources of revenue found in the Federal Legislative List: customs duties, excise duties on goods manufactured or produced in India, except liquors,

opium and narcotic drugs and medicinal toilet preparations containing alcohol, corporation tax; salt, taxes on income other than agricultural income; taxes on capital, duties in respect of succession to property other than agricultural land, stamp duty in respect of bills of exchange, cheques, promissory notes, insurance policies, etc., terminal taxes on goods or passengers carried by railway or air, taxes on railway freights and fares.

ASSIGNMENTS FROM THEM TO THE PROVINCES. Out of this list, duties and taxes on the following items have to be levied and collected by the Federation, but their net proceeds in any financial year must be assigned to the provinces and federated States and distributed among them in accordance with principles which may be formulated by an Act of the federal legislature: succession to property other than agricultural land, federal stamp duties, terminal taxes on goods and passengers carried by railway or air, and taxes on railway fares and freights. The federal legislature has the right to increase any of these duties or taxes by a surcharge for federal purposes, and the whole of the proceeds of the surcharge will go to the Federation.

Duties on salt, federal duties of excise, and export duties have to be levied and collected by the Federation, but if an Act of the federal legislature so provides, a part or the whole of the proceeds must be paid out of the revenues of the Federation to the provinces and federated States. The principles of distribution will be formulated by the federal Act. But at least 50 per cent of the proceeds of the export duty on jute must be assigned to the provinces or federated States in which jute is grown.

ASSIGNMENT OF INCOME-TAX. A prescribed percentage, which has now been fixed at 50, of the net proceeds of the taxes on income other than agricultural income is to be assigned to the provinces and the federated States. But the federal legislature may at any time increase the taxes by a surcharge for federal purposes, and the whole proceeds of such a surcharge shall go to the Federation. Similarly, out of the moneys

assigned to the provinces and federated States, the Federation may retain certain prescribed sums for prescribed periods. So that in case of financial stringency during the earlier years of the operation of the federal machine the federal revenues will not be depleted by grants made to the provinces and States

The States will not be subjected to direct taxation by the Federation except in the case of the corporation tax which may be levied after ten years from the inauguration of the Federation. They will also be called upon to pay special surcharges on income-tax in an emergency. The corporation tax may be commuted into a lump contribution

SUBVENTIONS TO DEFICIT PROVINCES Special subventions have to be given out of the revenues of the Federation to make up the deficit in the budgets of certain provinces. They have been fixed by an Order-in-Council, which was issued in accordance with the recommendations of the Niemeyer Report

PAYMENTS TO THE CROWN'S REPRESENTATIVE The Federation has to pay out of its revenues sums required by the Crown's Representative for the discharge of his functions in relation to the Indian States. In signifying his acceptance of the Instrument of Accession of any State, His Majesty may agree to remit any cash contribution that may be payable by that State. Detailed provisions have been made in this connexion by section 147 of the Act

The sources of income possessed by the Provincial Governments in the federal constitution have been described at length in Chapter XXIII, §3, of this book.

THE FEDERAL BUDGET The federal budget will be laid every year before the chambers of the federal legislature, and will show separately estimates of expenditure which are votable by those chambers and those which are non-votable. The latter are described as being charged upon the revenues of the Federation and are beyond the control of the elected representatives of the people. Those amounts will be spent in accord-

ance with the directions given by the Governor-General and his bureaucratic advisers.

NON-VOTABLE EXPENDITURE. The non-votable items as mentioned in section 33 are : Salaries and allowances of the Governor-General, Ministers, Counsellors, Financial Adviser, Advocate-General, Chief Commissioners, staff of the Financial Adviser, judges of the Federal Court and the High Courts, debt charges including interest, sinking fund and redemption ; expenditure on defence, ecclesiastical affairs, external affairs, tribal areas and excluded areas in the provinces ; expense incurred in discharging the functions of the Crown in relation to the States, and in satisfying any decree, judgement or award of a court ; any other expenditure declared by the Act or by an Act of the federal legislature. Section 247 (4) also prescribes that the salary and allowances of persons appointed to a civil service or civil post by the Secretary of State are charged upon the revenues of the Federation.

CUTS IN THE VOTABLE ITEMS CAN BE RESTORED. It has been calculated that all these sums put together would cover over four-fifths of the total expenditure of the Federation. The remaining one-fifth will be submitted to the vote of the legislature in the form of demands for grants. But any cut in the demand made by the legislature can be restored by the Governor-General if he feels that it would affect any of his Special Responsibilities.

XIX

THE FEDERAL RAILWAY AUTHORITY

1. Importance of Railways

ECONOMIC, MILITARY AND CULTURAL BENEFITS Railways play a very important part in the life of a modern community. They give a powerful impetus to the development of industry, trade and commerce and bring about the economic prosperity of a nation. The services rendered by them in times of war are of inestimable value. The facility of cheap and comfortable travel helps to multiply human contacts and to enlarge the human mind and vision. In short, railways are the grand arteries not only of a nation-wide system of communications, but also of the realm of knowledge, art and culture. Every state is therefore interested in the adequacy and the efficiency of its railway organization.

VAST CAPITAL EXPENDITURE Unlike most other social utilities, the construction and operation of railways involves a vast outlay of capital expenditure. Difficult and costly engineering projects like bridges and tunnels have to be carried out successfully, high-powered engines and other types of machines have to be continuously employed, a large staff of experts and others has to be constantly maintained. All this means huge expense. But on the other side, the income earned by railways is also immense. They carry thousands of tons of goods and millions of passengers every year, and their daily gross earnings are counted by lakhs of rupees.

BUSINESS PRINCIPLES OF WORKING NECESSARY. Railways may be owned and managed by a state or by private companies incorporated within a state. But in any case the fact cannot be forgotten that, in a capitalistic society, they are in the nature of big business concerns and require to be conducted on sound commercial principles, consistently with the safeguarding of national interests as defined by progressive thinkers. The capital

investments made in railways, even when they belong to private shareholders, are a national asset and need to be protected, though no protection can be granted at the cost of social justice and the welfare of the community as a whole.

Whether railway ownership and management vest in the state or in private companies, a twofold objective needs to be achieved. The freshness, elasticity and economic equilibrium of private enterprise have to be preserved, and simultaneously the abuses of private monopoly, unbridled lust of profit and criminal indifference to the public good, have to be effectively prevented.

2. Railways in India

PROGRESS OF RAILWAYS IN INDIA Railway construction was first started in India in 1854 during the Governor-Generalship of Lord Dalhousie, and it has made rapid progress since then. There are at present about 43,000 miles of railway track in the country, and the total amount of capital invested in them amounts to nearly 880 crores of rupees. Most of the work was done by private joint stock companies formed in England with English capital. They received a number of concessions from the Government of India, including a guarantee of interest on the capital spent. That is how the E I, G I P, B B & C I, M & S M, S I and similar other railway companies came into existence. Specific portions of Indian territory were allotted to them for operation.

GOVERNMENT OWNERSHIP AND COMPANY MANAGEMENT. Originally, the ownership and management of railways vested in these companies with certain restrictions imposed on them by the Government. When the period of their contract came to an end, many of the companies were purchased by the state in accordance with the terms of the contract, and state ownership thus came to be established over many railways. But state ownership did not mean state management. After the purchase of the railways, the Government entered into fresh

agreements with the same companies, entrusting the working of their railway systems to them on certain conditions. These new contracts were terminable at the end of specified periods.

ACWORTH COMMITTEE RECOMMENDATIONS A number of defects were noticed in railway administration and policy during the Great War of 1914-18, and therefore when it was time for the contracts with the E.I.R. and the G.I.P.R. to come to an end, the Government appointed a committee under the presidency of Sir William Acworth to investigate the whole question and to make recommendations for reform. Two momentous changes were introduced as a result of the committee's report. In the case of the companies with whom the contracts were expiring, the state took the management into their own hands and to that extent the old method of company management was abolished. Secondly, the railway budget was separated from the general budget of the Government of India and a fixed contribution began to be taken from the railways towards the general revenues of the country.

INDIAN CRITICISM OF RAILWAYS The Indian people have been very critical about the railway policy pursued by the Government. No special effort was made to attract Indian capital and to employ Indian talent in their construction and working. On the contrary, generous concessions were granted to the foreign companies which were formed for the purpose of constructing and operating them. The guarantee of interest on the capital invested was bound to encourage not economy but extravagance. The capital expenditure of hundreds of crores of rupees was not so organized and incurred as to lead to the growth of big industries in India. In fact, the Indian railways were often accused of injuring Indian industries by quoting unfavourable tariff rates for the carriage of their produce. Indians were excluded from the higher branches of railway service, and the conditions of travelling for third-class passengers, who form the majority of Indian people and

who contribute the major portion of the railway income, were intolerable

ADVANTAGE OF STATE MANAGEMENT. Management of railways by the state was expected to go a long way towards removing most of these evils. The private shareholders' companies incorporated in a foreign country were beyond the criticism and control of the Indian people. But even a bureaucratic Government could be reached and indirectly influenced by non-official members of the Indian legislature. In a fully self-governing India, railway policy and administration will be determined by the Indian people acting through their elected legislatures and responsible Ministers. No outside interference will then be permissible.

THE RAILWAY BOARD. At present the railway department is in charge of the Member for Communications in the Central Executive Council. Below him there is the Railway Board consisting of the Chief Commissioner, the Financial Commissioner and one member, with directors, deputy-directors and secretaries under them. The railway budget is presented separately by the Communications Member to the central legislature, which can discuss it generally and vote a part of its grants. The Railway Board was the executive creation of the Government of India for the convenience of administration and was not the result of any Parliamentary statute. Its composition and duties can be varied without reference to Parliament and even its existence can be brought to an end by the orders of the Government of India with the sanction of the Secretary of State.

3. Changes Proposed by the Act of 1935

STATUTORY RAILWAY AUTHORITY. The proposed transfer of political power into the hands of Indians raised the question of control over railways. Large amounts of British capital have been invested in them and Parliament did not want to jeopardize this capital even remotely by any constitutional changes that may be introduced in India. The matter was considered by a sub-committee appointed by the Secretary of State in

1933 and also by the Joint Parliamentary Committee, and it was recommended that the actual control of the administration of Indian railways should be placed in the hands of a Statutory Railway Authority which would be free from political interference. Accordingly, Part VIII of the Act, sections 181-99, and the Eighth Schedule have been devoted to the subject of railways

ITS CONSTITUTION It is laid down that the executive authority of the Federation in India in respect of the regulation and construction, maintenance and operation of railways shall be exercised by the Federal Railway Authority. It will be a corporate body and will consist of seven persons to be appointed by the Governor-General. Of these not less than three are to be appointed by him in his discretion and the rest presumably on the advice of his Ministers. From among the members a President of the Authority is to be appointed by the Governor-General in his discretion.

QUALIFICATIONS AND TENURE OF ITS MEMBERS No person will be qualified to be a member of the Authority (a) unless he has had experience in commerce, industry, agriculture, finance or administration or (b) if he is, or within the twelve months last preceding has been, (i) a member of the federal or any provincial legislature or (ii) in the service of the Crown in India or (iii) a railway official in India. The tenure of a member is to be five years and he will be eligible for reappointment for a further term not exceeding five years. The Governor-General exercising his individual judgement may terminate the appointment of any member if he is found unable or unfit to perform his duties. The salary and allowances are to be determined by the Governor-General in his individual judgement.

OFFICIAL STAFF At the head of the executive staff of the Authority there will be a Chief Railway Commissioner appointed by the Governor-General exercising his individual judgement after consultation with the Authority. He will be a man with experience of railway administration. He will be assisted by a Financial Commissioner appointed by the Governor-General and

by such additional commissioners as the Authority on the recommendation of the Chief Commissioner may appoint. The Chief Commissioner and Financial Commissioner will have the right to attend any meeting of the Authority.

FEDERAL CONTROL OVER POLICY. The Authority in discharging their functions will have to act on business principles, due regard being paid to the interests of agriculture, industry, commerce and the general public. On all questions of policy they will be guided by instructions given to them by the Federal Government. If any dispute arises as to whether a question is or is not a question of policy the decision of the Governor-General in his discretion will be final. He may also issue to the Authority such directions as he may deem necessary in respect of matters involving any of his Special Responsibilities or in regard to which he is required to act in his discretion or in his individual judgement. The Authority must give effect to such directions.

RULES FOR TRANSACTION OF BUSINESS. The Governor-General exercising his individual judgement, but after consultation with the Authority, may make rules for the transaction of business arising out of the relations between the Federal Government and the Authority. They shall include provisions requiring the Authority to transmit to the Federal Government all such information as may be specified in the rules and to bring to the notice of the Governor-General any matter which involves or is likely to involve any special responsibility vested in him.

THE RAILWAY FUND. The Authority is required to establish, maintain and control a fund to be known as the Railway Fund, and all moneys received by the Authority whether on revenue account or on capital account from any source have to be paid into that Fund. All expenditure, whether on revenue account or on capital account, required for the discharge of their functions has to be defrayed out of the Fund. Any surpluses on revenue account have to be apportioned

between the Federation and the Authority in accordance with a scheme to be prepared, and from time to time reviewed, by the Federal Government

RAILWAY RATES COMMITTEE. The Governor-General may from time to time appoint a Railway Rates Committee to give advice to the Authority in connexion with any dispute as to rates or traffic facilities between the public and the Authority. A Bill or amendment for regulating the rates or fares to be charged on any railway can be introduced in any chamber of the legislature only on the recommendation of the Governor-General

RAILWAY TRIBUNAL There will be a Railway Tribunal consisting of a President and two other persons selected by the Governor-General in his discretion. They will be men of railway, administrative or business experience. The President will be a judge of the Federal Court and will hold office for a period of not less than five years as may be specified in the appointment. It will be the duty of the Tribunal to exercise such jurisdiction as is conferred on it by the Act, and an appeal from its decision will lie to the Federal Court on a question of law.

RESULTS OF THE CHANGE It will be seen from this brief account of the constitution and functions of the Federal Railway Authority that a special arrangement has been proposed for the administration of Indian railways after the inauguration of the Federation and the introduction of partial responsibility. They will not be a Reserved subject in charge of the Governor-General and outside the competence of the legislature. But they will not be in charge of a responsible Minister either. The Authority to which their management is entrusted will be dominated by the Governor-General acting in his discretion in many ways. And no change can be brought about in its constitution and functions except with the sanction of Parliament because it will mean an amendment of the Act of 1935. Thus Parliament's direct control is established over the nature of the machinery which manages the railways of India.

PART V

THE PROVINCIAL GOVERNMENTS

XX

THE FORMATION OF PROVINCES AND THEIR STATUS UP TO 1937

1. Absence of any Plan

A CENTURY OF CONQUEST. A striking spectacle is presented by the pages of Indian history during the century that followed the battle of Plassey. They unfold the evolution of a mighty empire from very unostentatious beginnings. British sovereignty was steadily established over the whole of India during the course of the hundred years from 1757 to 1858. Ruler after ruler in all parts of the country capitulated before the might of the foreign invader, and the last gasp of the dying nation was breathed out when the Indian Revolt of 1857 was completely frustrated. A moral, material and intellectual exhaustion seems to have prostrated the people of India during these sad days of their decadence and downfall.

PROVINCIAL DIVISIONS NECESSARY. The British conquerors naturally found it necessary to organize a system of government for the empire they had acquired. Obviously, the Indian continent was too big and unwieldy to be treated as one single unit for the purpose of

administration It had to be split up into smaller areas for the proper exercise of authority and efficient management. India has always been composed of different nationalities, each confined mainly to a particular part of the country. The British conquest of this variegated land was not effected by a few decisive military strokes within a short time, but was spread over a long century and accomplished bit by bit. As new possessions came under their rule, arrangements had to be made to govern them.

UNPLANNED FORMATION Officials of the East India Company who were called upon to form political subdivisions of the country during the period and process of conquest could not have the perspective of a whole British Indian dominion, because it had not become a reality then. They had to provide a suitable administrative machinery for groups and patches of territory which came intermittently into their hands. The problem was often solved by the new areas being simply added to an adjoining older possession of the Company and brought under its administration. No thought was given to the homogeneity or otherwise of the combination from the point of view of race, language or religion.

THREE TYPES OF PROVINCES Three different types of provinces were in existence in India before the Montford Reforms. The old presidencies of Bombay, Madras and Bengal were under Governors who were assisted by Executive Councils. They were the centres where the earliest trading settlements of the East India Company had been established and from where their imperial adventure was directed. The United Provinces, Bihar and the Punjab were under Lieutenant-Governors, and the Central Provinces, Assam and N-W F Province under Chief Commissioners. There were no executive councils in both these types. In fact, this threefold classification represented a descending grade of constitutional status and powers. The Montford Reforms did away with the distinction and elevated all the Lieutenant-Governors and almost all the Chief Commissioners to the dignity and designation of Governors. The old

differences in the matter of their appointment, salaries, etc., were however retained.

BASIC PRINCIPLES IN THE FORMATION OF PROVINCES. The formation of provinces in a country ought to be effected in accordance with certain basic principles which may have to be modified in the light of particular circumstances. For instance, under normal conditions and given a fairly numerous population, a common language, common historical affinities, common customs and traditions, common modes of life and thought and a common territory are regarded as natural lines of demarcation and division. They would recognize and represent distinct entities unified by strong internal ties. But no such principles were adopted in the formation of Indian provinces. The basis of the determination of their boundaries was not ethnological, linguistic or cultural. The one and only consideration which brought them into existence was immediate administrative convenience, as visualized by officers who were guided only by standards of practical expediency.

HETEROGENEOUS PROVINCES IN INDIA. Hence, some of the Indian provinces have become very heterogeneous in their composition and structure. They are conspicuous for a great variety of language and society. The province of Bombay, for instance, even after the separation of Sind in 1937, consists of three distinct cultural and linguistic groups, Gujarat, Maharashtra and Karnataka. Similarly, the province of Madras comprises people speaking Kanarese, Telugu, Tamil and Malayalam. The creation of such patchworks is injurious in two ways. It breaks up units that are homogeneous—for instance Karnataka which is divided between Bombay, Madras, the Nizam's Dominions and the Mysore State—and brings together units which do not feel spontaneously attracted towards each other by a community of language and mental outlook.

2. Demand for a Rearrangement of Provinces

DEMAND FOR AN ALTERATION OF PROVINCIAL BOUNDARIES. The spasmodic and irrational method of the

formation of provinces has had an interesting sequel. There has now arisen in many parts of the country considerable agitation for a rearrangement of provincial boundaries on more rational and equitable lines. The growth of education has produced a self-consciousness in this as in all other spheres of public life. People who are closely united by ties of a common race, a common language and a common culture, find themselves split into ineffective political fragments. They feel that their material and intellectual progress is unnecessarily hampered as the result of such a dissipation of their collective strength.

SIND AND ORISSA SEPARATED Several homogeneous groups have therefore protested against their political dismemberment by the Government of India and have demanded that they should be restored to their natural unity. Unfortunately, communal ambitions and wranglings were greatly in evidence even in this question, when the separation of Sind was discussed. The Act of 1935 has recognized the claims of Sind and Orissa to provincial independence, and accordingly these two names have been added to the list of Governors' Provinces. It would not be surprising if a few more are added in the course of the next few years by the splitting up of glaringly heterogeneous areas.

NEW PROVINCES MAY REQUIRE SUBVENTIONS A brief reference must be made here to the other side of this important subject. The creation of new provinces has been deprecated by some eminent critics on financial as well as national grounds. It is held to be a costly luxury. If the provincial area is small, it cannot be self-sufficient in the matter of its income and expenditure. Its administrative machinery may also prove to be inadequate to meet all the various needs of social uplift according to modern standards. Such lean provinces will then become a burden upon the Federation which will have to help them with subventions in order that their budgets should be balanced. It has been decided, for instance, that Sind and Orissa should be given annually about a crore and half a crore of rupees.

respectively by the Central Government to enable them to make up their deficits.

CULTIVATION OF A WIDER NATIONAL OUTLOOK. It is also pointed out that the present incongruous formation of provinces has its own advantages in a larger national sense. It brings together under one administrative system several of the smaller nationalities of which India is made. They get an opportunity to work together and to understand each other. Such contact between diverse populations is to be desired, as it helps in rounding off the angularities of a narrow provincialism and inculcates the broader national vision which is so urgently required in India. A cosmopolitan outlook and a capacity for assimilation are at least as essential in the modern world as the strength which comes from innate coherence. A reshuffling of the provincial areas may be undertaken in a spirit of reform and justice, but even then some common meeting-ground, some common organization for the different neighbouring units to remain in touch with each other, should be provided.

3. The Status and Powers of Provinces till the Act of 1935

BEFORE THE REGULATING ACT A reference has already been made to the constitutional status of Indian provinces before the introduction of provincial autonomy in 1937. In the earlier days of the Company's existence the Governors of Madras, Bombay and Calcutta were independent of each other. But at that time they had no territories to govern. Their duties were almost purely commercial and their activities did not involve any difficult problems of administration or politics. From the middle of the eighteenth century they began to drift into war and to build an empire. The complex responsibilities of governance had to be shouldered by its officers, and a fuller and unified organization was required for that purpose.

CENTRALIZATION AND THE CREATION OF A UNITARY STATE A centralized system was therefore instituted by the Regulating Act in 1774. The Governors of Bombay

and Madras were subordinated to the Governor of Bengal who henceforth became the Governor-General. Ultimate control over civil and military administration in all the territories of the Company was vested in this supreme official, who was given the assistance of an Executive Council. The provincial administrations could not of course be abolished; in a country of large distances and population like India their existence was essential and inevitable. But they were turned into mere agents of the Governor-General-in-Council, functioning for and on behalf of him and carrying out his mandates. They were not allowed to exercise any powers in their own rights nor was any sphere of activity specifically and exclusively assigned to them. This legal position and the unitary character of the Indian Government was repeatedly emphasized in subsequent parliamentary Acts like Pitt's India Act, the Act of 1833 and the Act of 1858.

DECENTRALIZATION SINCE 1870 However, as time passed it was increasingly realized that the administration in a vast country like India could not be completely concentrated in the hands of a single authority even when the constitution of the state was unitary. Details had to be separated from policies. Matters of local importance had to be separated from questions of national urgency. Governmental work had to be distributed among individuals and institutions on the principles of a rational division of labour. That alone could avoid inefficiency and confusion in operating the administrative machine. Lord Mayo therefore introduced a scheme of decentralized administration and finance in 1870, and it was considerably extended and developed during the next forty years. It was a domestic arrangement brought about by executive action and had no statutory basis.

NATURE OF THE CENTRAL CONTROL But even under this system of devolution which gave to the provinces a certain number of departments for management and a certain amount of local authority, the active control of the Government of India over them in all matters, finan-

cial, legislative and executive, was clearly emphasized. Provinces were not allowed to impose taxation without the previous sanction of the Governor-General. Nor were they allowed to borrow money by pledging their own credit in an open money market. Bills to be introduced in the provincial Legislative Councils required the previous sanction of the Governor-General. They also required his subsequent assent after they were passed by those chambers. There were many codes, regulations and instructions promulgated by the Central Government for the whole of India and they had to be strictly obeyed and carried out by every province. All executive action taken or proposed to be taken by the latter was subject to the close supervision and control of the Government of India. The administrative freedom obtained by the provinces could not be claimed by them as their right. It was only a concession and a privilege, the exercise of which was severely restricted by the powers of scrutiny and direction of the Governor-General.

AFTER THE MONTFORD REFORMS A new angle of vision was introduced by the Montford Reforms. The principle of responsibility was accepted for the first time as a vital feature of India's political advance. The provinces were selected to serve as a training-ground for the Indian people to learn the art of self-government of the parliamentary type. It logically followed that these territorial units should be freed to a great extent from the bureaucratic control exercised from above by the Government of India. Central and provincial spheres were therefore demarcated from each other by the compilation of two separate lists of administrative subjects under the Devolution Rules. One of these lists was assigned to the exclusive jurisdiction of the Central Government and the other was given to the provinces.

GREATER FREEDOM TO THE PROVINCES Broadly speaking, the authority of the Provincial Governments in the provincial sphere was intended to be real and unfettered. Their budgets were separated from the central budgets. A greater power of taxation was conferred on them.

They were allowed to float loans with the sanction of the Government of India. Previous sanction of the Governor-General for legislation in purely provincial subjects was made less obligatory than before. The Central Government's control over the Transferred provincial departments was practically withdrawn. Even in the Reserved half, they agreed not to interfere whenever the provincial executive and legislature were in agreement.

Thus, steps were taken to emancipate the provinces from a number of restraints. The principle was accepted that a substantial measure of freedom and discretion must be granted to them in the interests of a proper and all-round development of the whole country.

A BRIEF OUTLINE OF DYARCHICAL GOVERNMENT, 1921-37

1. The Genesis of the Scheme

THE GOAL OF BRITISH POLICY IN INDIA The final goal of British policy in India, as visualized by the British, was enunciated in the announcement of 20 August 1917. It was described as the progressive realization of responsible government and the gradual development of parliamentary institutions. The Act of 1919 was intended to be the first important step in carrying out that promise. Parliament tried to find a way out of two impossible and unacceptable situations. On the one hand, it was pledged not to permit the Indian constitutional structure to remain entirely bureaucratic and uncontrolled by the Indian people as in pre-War days. On the other hand, it was determined not to allow the Indian polity to be suddenly transformed into a full-fledged democracy by one decisive stroke.

GRADUAL TRANSFER OF POWER Any scheme of reform which is based on this hypothesis must be essentially a compromise between the bureaucratic and the democratic principles. It could not bring about the disappearance of an irresponsible and irremovable executive from the Indian scene. The conduct of a large part of Indian administration would continue to be vested in officials who are directly answerable only to the Crown and Parliament of Britain. The transfer of political power to India would not be complete but partial and even fractional. It would be also subject to the superior control of the Governor-General. The dyarchical plan introduced by the Act of 1919 can be properly understood only when it is related to this fundamental assumption.

THE DYARCHICAL PLAN OF 1919. That plan proceeded chiefly along the following cardinal points. In the first

place, even though the unitary form of the Indian state was maintained, the spheres of the Central and Provincial Governments were clearly demarcated and separated from each other. They were recognized as two distinct entities, each having its own specific responsibility. Secondly, control by the Central Government was considerably relaxed in the provinces, though it was not completely abandoned. The provincial authorities were given a good deal of freedom in the management of their own affairs. Thirdly, provinces which thus acquired a status of greater administrative independence were made the centre of a new political experiment. The first instalment of self-government which was promised by Parliament was initiated in the provincial domain.

DYARCHY, A TRANSITIONAL PHASE The Act of 1919 contemplated a gradual evolution towards, and not an immediate establishment of, full provincial autonomy. It therefore devised a peculiar method of governance to suit the period of transition. That method is known as dyarchy. The term was quite new in political usage if not in coinage. The scheme was actually inaugurated in the beginning of 1921 and was working thereafter for over sixteen years till 1 April 1937. On that date it was superseded by the Government of India Act of 1935 which was put into operation nearly a couple of years after it was passed by Parliament.

2. The Provincial Executive

RESERVED AND TRANSFERRED SUBJECTS The system of dyarchy as it operated in the Indian provinces was essentially based on one dominant principle. It deliberately created a division of the Government into two sections. One of them was wholly bureaucratic and the other was popular to a great extent. The former, which was known as Reserved, was managed by an irremovable Executive Council. The latter, which was called Transferred, was given over for management to responsible Ministers. They were elected members of the provincial Legislative Council and answerable to it for their policies and actions. Both these sets of officials

were required to work under the same head, namely, the Governor of the province. They were also associated with, and depended for legislation upon, the same legislature.

SEPARATE SPHERES. An attempt was made to keep the jurisdiction of the two halves as distinct and independent as possible. Legally speaking, Executive Councillors could not interfere in Transferred subjects and Ministers could not interfere in Reserved subjects. They might of course hold friendly consultations with each other. Any dispute between them about the exercise of authority was left to the arbitration of the Governor whose decision was final.

OVERLAPPING. However, it was discovered by experience that the two divisions created by the dyarchical principle inevitably overlapped at several points. There could be no perfect differentiation between two parts of the same Government. It was found to be an inherent defect of the whole system that administrative work could not be successfully distributed into water-tight compartments like Reserved and Transferred. The very foundation of the structure was therefore a little shaky.

THE GOVERNOR. HIS EXECUTIVE POWERS. The Governor was the head of the province and played a dominant part in the working of the Provincial Government. He was invested with many powers, ordinary and extraordinary. He presided over the Executive Council, held counsel with Ministers, distributed portfolios among Executive Councillors and Ministers, and made rules for the transaction of their business. He was empowered, in exceptional cases, to override the Executive Council. Even in the sphere that was supposed to have been transferred to responsible Ministers, the Governor actively participated in the conduct of business. He was permitted to interfere with ministerial decisions, if necessary. Complaints were made before the Muddiman Committee that such interference often proved excessive in practice.

HIS LEGISLATIVE POWERS. All laws passed by the provincial legislature required the Governor's assent, and

in some cases his previous sanction was required for the very introduction of a bill. If the legislature did not pass a bill which was deemed essential by the Governor, he could certify it into an Act in spite of the opposition of the legislature.

HIS DUTY AS AN INTERMEDIARY The Governor's position was further strengthened by the peculiarities of the dyarchical plan. The constitutional status of the Reserved and Transferred halves was incongruous. Their composition, outlook and methods of work were greatly different. It was not improbable that, instead of moving together with harmony and smoothness they might clash with each other. To the Governor was left the important task of managing matters in such a fashion that conflicts, as far as possible, did not arise at all, and when they arose, were settled in a spirit of friendliness and co-operation.

HIS EMERGENCY POWERS On occasions of complete deadlock at budget meetings, the Governor was authorized to make allotments of funds, in his discretion, to the departments in the two halves. Similarly, if the majority party in the legislature refused to accept office and also prevented others from accepting it by refusing to vote their salaries, the Governor was empowered to take over the Transferred subjects in his own charge and to make arrangements for their administration. The Governors of Bengal and the Central Provinces did make use of this emergency power.

THE EXECUTIVE COUNCIL Members of the Executive Council were technically appointed by His Majesty, but in practice their choice was made by the Governor. Their tenure of office was fixed at five years and they could not be removed from their posts by an adverse vote of the legislature. Their salary was not subject to the control of the latter. One half of the Executive Councillors were Indians and the other half were members of the Civil Service of long standing. They functioned collectively as a Council, but not as a Cabinet, on the portfolio system.

THE MINISTERS The appointment of Ministers was

made by the Governor. But his choice was restricted to persons who were elected members of the provincial Legislative Council. Further, such persons alone could be selected to hold ministerial posts as were able to command a majority of the Council's vote. A Minister could continue in office only as long as his actions and attitude harmonized with the views of the legislature. Where public opinion was effectively organized into well-disciplined parties, the Governor had to leave the formation of a Ministry to the party leaders themselves. Unfortunately, such party formation was rare in Indian politics. Besides, the support of the nominated bloc and of the representatives of vested interests, both of which could be easily controlled by the bureaucratic government, had a considerable influence in determining the composition of a Ministry.

3. The Working of Dyarchy

NO COLLECTIVE RESPONSIBILITY OF MINISTERS. Ministers were not required to work on the principle of joint and collective responsibility. They did not come into office and go out of office together, and did not constitute an indivisible, homogeneous whole like the British Cabinet. They were not therefore fortified by the strength of a closely organized unit. The Governor dealt with a Minister as an individual head of a department. He did not recognize the existence of a group of Ministers having a joint responsibility for the management of the whole mass of Transferred subjects. In spite of their plural number, the Ministers did not make Ministries.

JOINT PURSE. There was one peculiar feature of the division of government introduced by the dyarchical scheme. Though the provincial sphere was purposely split into two halves, the provincial finances were left entirely undivided. They were looked after by a Finance Member whose authority extended to the whole administration. The budget for the two halves was common. There were no items of provincial revenue specifically assigned to either of them. All taxation was

provincial and its proceeds were credited to the provincial exchequer. Out of that common reservoir, into which all moneys were pooled, different sums were provided for expenditure on the various activities of the Provincial Government, whether in the Reserved or in the Transferred parts.

JOINT MEETINGS. Executive Councillors and Ministers had therefore to meet every year for preparing the provincial budget. The shares of expenditure that may be allotted to each department had to be judiciously and equitably determined. The task was not simple. The outlook of an irresponsible bureaucracy was fundamentally incompatible with the needs and ambitions of popular Ministers. A spirit of give-and-take, of mutual accommodation, of sympathy and co-operation, was absolutely essential to the smooth functioning of such a delicate mechanism. If the differences became acute, the result was a deadlock. On such critical occasions, the Governor could allocate funds between the two halves in his own discretion and prevent the machine from coming to a standstill.

MUTUAL CONSULTATIONS. Dyarchy was never intended to be an ideal in itself. It was not prescribed as the final form of the Indian Government, but as a stepping-stone to a nobler consummation, namely, a fully self-governing India. It was therefore recommended that members of the Executive Council and Ministers should take each other into confidence and work together in the closest intimacy and co-operation. There was no legal obstacle to their holding mutual consultations and discussions in all matters affecting their respective spheres. The Governor could take the initiative in establishing traditions of collective working. In practice, if not in law, the line of distinction between Reserved and Transferred subjects could be obliterated.

THE GOVERNOR WAS ALL-POWERFUL. However, such an idea proved to be too altruistic to be capable of realization. On the whole, the Governors were not prepared to accept all the implications of Mr Montagu's concept of dyarchy. In fact, experience showed that the Gover-

nor inevitably became the chief pivot and the centre of the provincial administration. He became the connecting and co-ordinating link between the two halves, and was the final judge for settling conflicts between them. Ministers complained of the undue interference of the Governor in the working of their departments. He was often inclined to override their decisions if he happened to differ from them. The interests of the Services were to be specially safeguarded by him. In short, all governmental power tended to be concentrated in his hands.

DYARCHY CONDEMNED BY INDIAN OPINION Indians were thoroughly dissatisfied with the whole project of dyarchy. The parliamentary appearances that it suggested were tantalizing. But the hybrid structure, with all its imperfections and inadequacies, could not but evoke severe criticism from politically-minded Indians. Those who had a personal knowledge of its inner working exposed its ridiculous contradictions and defects. The ideal manifestation of dyarchical government implied the complete self-effacement of an irresponsible bureaucracy. Unfortunately, that quality was too superhuman to be a normal feature of the administration.

4. The Provincial Legislatures

CHANGES MADE IN THEIR CONSTITUTION The Act of 1919 introduced several important changes in the constitution of the provincial legislatures. In the first place, they ceased to be looked upon as mere enlargements of the Executive Councils. Their status as independent organs of government was distinctly recognized. Secondly, a large majority of elected non-official members was provided in their structure. The official and the nominated non-official elements were not entirely removed, but they were placed in a numerical minority. Thirdly, the franchise for election to the provincial Legislative Councils was considerably lowered. The right to vote was conferred on comparatively poor people. It was the beginning of popular democracy.

INCREASE IN THEIR POWERS The powers of these legislatures were also increased. In addition to law-making,

they were given greater control over the administration by means of the rights of interpellation, adjournments, resolutions, etc. A part of the provincial budget was made subject to their vote. Lastly, they were privileged to exercise supreme authority over that portion of the provincial executive which was represented by the Transferred half. Ministers were entirely the servants of the legislature. Even the Executive Council could be indirectly influenced by the criticism of the Legislative Council.

TOTAL STRENGTH OF GOVERNOR'S LEGISLATIVE COUNCILS
AS GIVEN BY THE SIMON COMMISSION

Province	Statutory minimum	Elected	Nominated officials plus Executive Councillors	Nominated non-officials	Actual Total
Madras	118	98	7 + 4	23	132
Bombay	111	86	15 + 4	9	114
Bengal	125	114	12 + 4	10	140
United Provinces	118	100	15 + 2	6	123
Punjab	83	71	13 + 2	8	94
Bihar and Orissa	98	76	13 + 2	12	103
Central Provinces	70	55	8 + 2	8	73
Assam	53	39	5 + 2	7	53
Burma	92	80	14 + 2	7	103

THE PROVINCES IN THE FEDERAL CONSTITUTION

1. New Status of the Provinces

NO EXCLUSIVE SPHERE FOR THE PROVINCES BEFORE THE ACT OF 1935 By the Act of 1919 and the Devolution Rules made under it, certain subjects were earmarked as 'provincial', and governmental functions in respect of them were allowed to be exercised primarily by the provincial authorities. But the responsibilities entrusted in this way to the provinces were not exclusive. The Governor-General-in-Council and the central legislature possessed concurrent powers in the provincial sphere; they had not ceased to possess any legal power or authority regarding matters falling within the provincial sphere

INTRODUCTION OF PROVINCIAL AUTONOMY The Act of 1935 proposes an important departure from this system. The constitutional structure that it has framed is based on the concept of provincial autonomy whereby, in the words of the Joint Parliamentary Committee, 'each of the Governors' Provinces will possess an Executive and a Legislature having exclusive authority within the Province in a precisely defined sphere, and in that exclusively provincial sphere, broadly free from control by the Central Government and the Legislature'. The Act also contemplates the establishment of the Federation of India in which the autonomous provinces and the Indian States will be federally united.

FEDERAL INDEPENDENCE FOR THE PROVINCES The status of the Indian provinces must therefore undergo a vital change in the new Indian polity. They can no longer be considered as mere territorial divisions, created by the Central Government for its own convenience, and enjoying merely a devolved and not an original authority. Their powers and privileges cannot henceforward be

attributed to mere delegation by the Central Government. A federal unit has an independent existence of its own. It possesses certain rights which are guaranteed to it under the constitution, and which cannot be tampered with or violated by the Federal Government. The powers of supervision and control entrusted to the latter are strictly limited and are defined as accurately as possible.

DIVISION OF SUBJECTS The relations between the Government of India and the provinces are conceived and defined on a federal basis in the new constitution. There is now a greater emphasis on the concept of equality than on the idea of subordination and obedience in formulating the status of the provinces *vis-a-vis* the Central Government. A distinct sphere of activity is marked out and assigned to each one of those two entities. A third common sphere is created for their concurrent jurisdiction and action. Three separate lists of subjects are compiled in accordance with this three-fold division of governmental functions. They are exhaustively given in the Seventh Schedule of the Act.¹

It is quite clear from sections 8, 49, 99 and 100 that the authority of the Federation does not normally extend to subjects enumerated in the Provincial Legislative List. The provincial authority alone is competent to govern in that sphere.

2. The Provinces Today

GOVERNORS' PROVINCES Section 46 of the Act prescribes that the following shall be the Governors' Provinces: Madras, Bombay, Bengal, the United Provinces, the Punjab, Bihar, the Central Provinces and Berar, Assam, the North-West Frontier Province, Orissa and Sind. The total is eleven. Sind and Orissa have been newly created by section 289 of the Act. Burma has been separated from, and has ceased to be a part of, India.

POSITION OF BERAR The province of Berar was perpetually leased by the Nizam to the British Govern-

¹ For the three Lists see pp 147-9

ment in 1902, and section 47 of the Act prescribes that the Central Provinces and Berar should be governed together as one Governor's province. By an agreement signed between His Majesty and the Nizam in October 1936 His Majesty recognizes the sovereignty of the Nizam over Berar, but it is to be administered along with the Central Provinces as if it were a part of British India. The Governor of the province is to be appointed by His Majesty after consultation with the Nizam, who has also the right to maintain an agent in its capital.

UNIFORMITY OF PROVINCIAL CONSTITUTIONS The Act provides the same kind of constitutional structure for all the provinces, with variations of detail appropriate to their individual requirements and peculiarities. Their administrative systems are also likely to possess several common features in actual practice, though in the enjoyment of its autonomous powers each province is free to develop according to its own ideals and ability.

EXCLUDED AND PARTIALLY EXCLUDED AREAS Certain areas in some of the Governors' Provinces are inhabited by people who are almost in a primitive condition of life and are totally unfit for any kind of advanced or democratic government. The constitutional reforms introduced by the Act of 1935 obviously could not apply to them. But, Parliament decided that the administration of such backward tracts and the welfare of their uneducated inhabitants could not be entrusted to the care of responsible Indian Ministers. That duty has been placed in the hands of the Governor.

Section 91 of the Act empowers His Majesty to declare by an Order-in-Council that certain areas are to be considered as Excluded or Partially Excluded Areas. The draft of such an order was to be put before Parliament for its approval within six months of the passing of the Act. The procedure was followed, and in March 1936 an Order was issued specifying the limits of the Excluded and Partially Excluded Areas in the different provinces. They can be altered at any time by subsequent Orders-in-Council which may be issued by His Majesty.

In Bombay there are only Partially Excluded Areas,

which include the Shahada, Nandurbar and Taloda taluks of West Khandesh District, Kalvan taluk and Peint peta of Nasik District, Dahanu and Shahapur taluks and Umbergaon peta of Thana District, and Dahod taluk and Jhalod mahal of the Broach and Panch Mahals District.

ARRANGEMENTS FOR THEIR ADMINISTRATION The Excluded and Partially Excluded Areas are within the executive authority of a province, but only such federal or provincial laws or portions of these laws will apply to them as the Governor may by public notification direct. He may also make Regulations for the peace and good government of any such area. These Regulations have to be submitted to the Governor-General forthwith and assented to by him in his discretion. The Governor's functions in respect of an Excluded (not a Partially Excluded) Area are to be exercised in his discretion. In the Partially Excluded Areas he is presumably expected to act on the advice of his Ministers.

CHIEF COMMISSIONERS' PROVINCES A few smaller areas have been formed into independent units for various reasons, and special administrative arrangements have been made for them. For instance, Delhi as the capital of the whole country is not incorporated in any particular province. British Baluchistan, standing on the frontier of India, and Ajmer-Merwara standing as a British island in the midst of the territory of the Rajput States are classed independently. Section 94 of the Act prescribes that Delhi, British Baluchistan, Ajmer-Merwara, Coorg, the Andaman and Nicobar Islands and the area known as Panth Piploda (in Central India) shall be Chief Commissioners' Provinces.

THEIR ADMINISTRATION These provinces are within the executive authority of the Federation and will be administered by the Governor-General acting, to such extent as he thinks fit, through a Chief Commissioner to be appointed by him in his discretion. Section 95 prescribes that in directing and controlling the administration of British Baluchistan, the Governor-General will act in his discretion. Only such federal Acts or portions

of such Acts will apply to it as the Governor-General by public notification directs. He may also in his discretion make regulations for the peace and good government of British Baluchistan, subject to disallowance by His Majesty. Regulations may similarly be made by the Governor-General for the Andaman and Nicobar Islands.

In the case of the other Chief Commissioners' Provinces, the powers of the Governor-General, except in respect of the appointment of the Chief Commissioner, will presumably be exercised on the advice of the federal Ministers

CREATION OF NEW PROVINCES. The creation of new provinces and the alteration of the boundaries of the existing provinces are matters of great constitutional importance. By section 290 of the Act, these powers are vested in His Majesty and he can exercise them by issuing Orders-in-Council. But before any such order is issued, the opinion of the Government and the legislature of the provinces concerned, as also the opinion of the Federal Government and federal legislature, have to be ascertained. In effect, therefore, this power may be now said to be exercised with the approval of the Indian people. At least negatively speaking, it is no longer possible to change the boundaries of a province in a manner which offends Indian opinion as happened in the case of the Bengal Partition in 1905.

AREA AND POPULATION OF THE PROVINCES

As given in the Indian Delimitation Committee's Report, 1936

Provinces in the Federal Constitution

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Name of province	Area	Total population	General— including scheduled castes	Scheduled castes	Moham- medans	Anglo- Indians	Euro- peans	Indian Christians
Madras	126,663	44,183,609	39,083,342	6,944,747	3,290,294	28,630	12,341	1,703,791
Bombay	77,221	18,192,475	15,602,932	1,673,896	1,602,385	14,176	18,028	267,460
Bengal	72,514	50,114,002	22,493,659	9,124,925	27,497,624	27,573	20,895	129,134
United Provinces	106,248	48,408,763	40,905,586	12,591,525	7,181,927	11,263	22,043	170,216
Punjab	91,919	23,551,210	6,328,415	1,440,750	13,302,991	2,995	19,106	392,144
Bihar	69,348	32,371,434	28,194,621	4,490,599	4,140,327	5,892	5,390	331,185
Central Provinces and Berar	99,920	15,507,723	14,815,054	2,927,343	682,854	4,740	5,075	35,531
Assam	27,572	8,214,076	4,858,779	572,490	2,753,563	558	2,961	117,200
North-West Frontier Province	13,518	2,425,003	142,977		2,227,303	150	7,947	4,116
Orissa	32,681	8,174,251	8,043,018	1,006,983	131,233	635	856	36,573
Sind	46,378	3,887,070	1,015,225	99,551	2,830,800	1,930	6,576	6,627
India—excluding Burma and Aden	1,575,107	338,119,154	238,622,602	50,250,347	77,049,868	119,143	274,029	5,570,240
British India—excluding Burma and Aden	862,599	256,808,309	177,175,450	39,137,405	66,392,766	101,380	238,592	3,193,337

THE AMBIT OF PROVINCIAL AUTONOMY

It has been explained in the last chapter how the provinces have acquired a new status of independence in the federal constitution, and how they have been made autonomous in a sphere specifically assigned to them. It is necessary to understand the extent within which their autonomy will be operative, and the limits that have been imposed on it. The legislative, executive and financial powers enjoyed by the provinces under the new scheme must be properly grasped. They have been described in the following pages

1. The Law-Making Powers of a Province

DEFINITION OF JURISDICTION The constitutional position in respect of the powers of legislation to be exercised by the Federation and the provincial units has been clearly stated in section 100 of the Act. The purpose of creating three different lists is obvious. They are intended to bring about a decentralization of authority. It is therefore laid down that the federal legislature has, and the provincial legislature has not, power to make laws with respect to any matter enumerated in the Federal Legislative List, that the provincial legislature has, and the federal legislature has not, power to make laws with respect to any matter enumerated in the Provincial Legislative List, and that the federal legislature, and the provincial legislature also, have power to make laws with respect to any matter enumerated in the Concurrent Legislative List.

EXCEPTIONAL POWERS IN A STATE OF EMERGENCY A special provision is made in section 102 for cases of grave emergency when the security of India is threatened, whether by war or by internal disturbance. On such exceptional occasions the federal legislature will have power to make laws for a province with respect to any

matter enumerated in the Provincial Legislative List. But no Bill or amendment for that purpose can be introduced without the previous sanction of the Governor-General given in his discretion. Such a sanction is not to be given unless it appears to him that the provision proposed to be made is proper in view of the nature of the emergency. It is for the Governor-General, acting in his discretion, to declare by Proclamation that a state of emergency exists. Such a Proclamation may be revoked subsequently. But it will cease to operate at the expiration of six months unless Parliament directs otherwise.

FEDERAL LAWS FOR TWO OR MORE PROVINCES BY CONSENT In matters falling entirely within the provincial sphere, sometimes a common legislative action may be felt to be desirable by two or more provinces. Their legislatures may request, by Resolutions, that such matters should be regulated in their individual provincial areas by an Act of the federal legislature. In response to such requests, it will be lawful, according to section 103, for the latter body to pass the necessary Acts. An Act so passed may, as regards any province to which it applies, be amended or repealed by an Act of the legislature of that province.

RESIDUAL POWERS TO BE ALLOTTED BY THE GOVERNOR-GENERAL In the actual conduct of the administrative machine, it may be revealed on some rare occasions that a particular matter which requires to be disposed of cannot be appropriately held to fall either in the Federal or the Provincial or the Concurrent sphere, as defined in the three Legislative Lists. The question then arises as to who is the competent authority to pass the necessary legislation. Every federation has to make provision for what are known as residual powers. In India, those powers are vested practically in the Governor-General by section 104 of the Act. He has been allowed, in his discretion, to empower either the federal legislature or the provincial legislature to enact laws pertaining to topics of such doubtful jurisdiction.

THE FEDERAL LAW TO PREVAIL IN CASES OF INCON-

SISTENCY. In spite of the delimitation of legislative spheres, some few instances of mutual entanglement and complicated relationship may be discovered in actual experience. The federal as well as a provincial legislature may happen to have passed Acts on an item which belongs to the Federal or to the Concurrent List. A provision of the provincial law may be in conflict with or repugnant to a provision of the federal law. In such cases it is definitely laid down in section 107 that the federal law shall prevail and that the provincial law, to the extent of the repugnancy, shall be void. However, if the provincial law so passed concerns a subject in the Concurrent Legislative List and if it has received the assent of the Governor-General or His Majesty, it will prevail in that province.

PREVIOUS SANCTION OF THE GOVERNOR-GENERAL The previous sanction of the Governor-General, given in his discretion, is made obligatory by section 108 for the introduction of the following Bills or amendments in a chamber of the provincial legislature : (i) a Bill which repeals, amends or is repugnant to any provisions of any Act of Parliament extending to British India ; (ii) a Bill which repeals, amends or is repugnant to any provisions of any Governor-General's Act or any ordinance promulgated by him , (iii) a Bill which affects matters which are in the discretion of the Governor-General ; (iv) a Bill which affects the procedure for criminal proceedings in which European British subjects are concerned.

NO POWER TO PASS DISCRIMINATORY LAWS AGAINST BRITISH SUBJECTS Chapter III of Part V of the Act, sections 111-21, contains elaborate provisions with respect to discrimination by the Indian legislatures against British subjects domiciled in the United Kingdom or Burma. They apply both to federal and provincial laws. Provinces are therefore precluded from passing any kind of discriminatory legislation against British subjects British companies and corporations, British ships and aircraft, British-registered medical practitioners, British persons carrying on any occupation, trade or business,

etc. Thus even 'provincial autonomy' has been subjected to serious limitations and deductions, which are defined in terms which are not only explicit but extremely wide. In the nature of things, every attempt made by Indian Ministers to improve India's material condition can be easily interpreted to affect adversely some British interest or another. The full liberty of action that is supposed to have been conferred upon the provinces is in reality very considerably diluted.

POWER OF PARLIAMENT IS RETAINED Section 110 expressly provides that nothing in the Act shall be taken to affect the power of Parliament to legislate for British India or any part of it, and that nothing shall be taken to empower the federal or provincial legislature to make any law affecting the Sovereign or the Royal Family or the succession of the Crown, the sovereignty, suzerainty or dominion of the Crown, the law of British nationality, the Army Act, the Air Force Act, the Naval Discipline Act, or the law of Prize Courts. Similarly, the Act of 1935 or any Order-in-Council made thereunder or any rules made thereunder cannot be amended unless it is expressly permitted in the Act.

2. The Executive Powers of a Province

DEFINITION OF THE PROVINCIAL SPHERE It is distinctly provided that the executive authority of each province extends to the matters with respect to which the legislature of the province has power to make laws (sub-section 2 of section 49). Within the framework of the Federation, the provincial sphere is differentiated and it is entrusted to the Provincial Governments. The latter are no longer under the general obligation of obeying the orders of the Governor-General-in-Council and of constantly and diligently informing him of their proceedings. They are presumed, *prima facie*, to have independence of judgement and action in their own domain. Provincial policy and administration are to be determined by the people of the province acting through their legislatures and Ministers. It is one of the fundamental principles of provincial autonomy that the affairs

of the province should be left to be managed by those who live in the province and are directly affected by the nature of its Government

RESTRICTIONS ON THE EXECUTIVE AUTHORITY OF THE PROVINCE However, certain restrictions have necessarily to be imposed on the executive freedom of even autonomous provinces when they are federated together in one composite whole. In the federal constitution of a country like India, the number of such restrictions and the scope for their operation is conspicuously large. That is inevitable in an atmosphere of Reservations, Safeguards and Special Responsibilities. It is necessary to understand the limits which have been prescribed in the conduct of the provincial administration. They have been elaborated in Part VI, sections 122-35, of the Act.

ADMINISTRATION OF FEDERAL SUBJECTS IN THE PROVINCES The Provincial Governments have no executive authority in respect of subjects which are not mentioned in the Provincial Legislative List and which are not therefore within their legislative competence. Laws passed by the federal legislature in respect of subjects enumerated in the Federal Legislative List have application in the whole country, and their administration and execution is entrusted to the Federal Government. To that extent the latter has *locus standi* and definite right of operation in the provincial territory.

RESPECT FOR FEDERAL LAWS It is laid down that the executive authority of every province shall be so exercised as to secure respect for the laws of the federal legislature which apply in that province. The Governor-General may direct the Governor of any province to discharge as his agent such functions in and in relation to tribal areas or in relation to defence, external affairs or ecclesiastical affairs as may be specified in the direction. These functions are to be performed by the Governor in his discretion.

THE FEDERATION MAY IMPOSE DUTIES ON A PROVINCE The Governor-General may, with the consent of the Governor of a province, entrust either conditionally or unconditionally to its Government or to its respective

officers functions in relation to any matter to which the executive authority of the Federation extends. An Act of the federal legislature may also confer powers and impose duties upon a province or its officers in respect of subjects which are not enumerated in the Provincial or Concurrent Legislative Lists and are therefore outside the jurisdiction of a province. Any extra cost of administration incurred by a province for this purpose will be paid by the Federation.

THE FEDERATION MAY GIVE DIRECTIONS The executive authority of a province has to be exercised so as not to impede or prejudice the exercise of the executive authority of the Federation. The latter can give such directions to a province as may appear to the Federal Government necessary for that purpose. Directions may similarly be given about carrying out in a province federal laws which relate to matters specified in Part II of the Concurrent Legislative List (subjects like factories, labour welfare, trade unions, electricity, inland shipping and navigation, cinematograph films, etc.), and about the construction and maintenance of means of communication of military importance.

PURCHASE OF LAND AND BROADCASTING. The Federation may require a province to acquire any land situated in a province for a federal purpose at the expense of the Federation. In respect of broadcasting it is laid down that the Federal Government shall not unreasonably refuse to entrust to the Government of any province such functions as may be necessary to enable that Government to construct and use transmitters in the province and to regulate and impose fees in that connexion; but this does not restrict the powers of the Governor-General for preventing any grave menace to the peace or tranquillity of India or any part of it and does not prohibit him from imposing upon Provincial Governments such conditions regulating the matter broadcast as appear to him necessary.

DISPUTES ABOUT WATER Disputes between the provinces about supplies of water from any natural source have to be referred by the Governor-General to special

ad hoc commissions consisting of men of expert knowledge and experience, and after considering reports made by them the Governor-General has to give decision in the matter of the complaint and to issue the necessary orders. On the request of any of the provinces, if made before the Governor-General's decision is given, the matter must be referred to His Majesty-in-Council. The orders of His Majesty or of the Governor-General must be given effect to by the provinces concerned.

INTER-PROVINCIAL COUNCIL It will be lawful for His Majesty-in-Council to establish, after considering representations made to him by the Governor-General, an Inter-Provincial Council for dealing with problems affecting more than one province. It would be charged with the duty of (i) inquiring into and advising upon disputes which may have arisen between the provinces, (ii) investigating and discussing subjects in which the provinces and the Federation have a common interest, and (iii) making recommendations for the better co-ordination of policy and action with respect to such subjects.

GOVERNOR-GENERAL'S POWERS TO ISSUE ORDERS Clause 5 of section 126 of the Act prescribes that the Governor-General acting in his discretion may at any time issue orders to the Governor of a province as to the manner in which its executive authority is to be exercised for the purpose of preventing any grave menace to the peace and tranquillity of India or any part of it. The Joint Parliamentary Committee explained that such a clause was necessary, over and above the Governor's special responsibility for the same subject, because the peace and order in one province may be endangered by events taking place in another; and that as the ultimate and residuary responsibility for the peace and tranquillity of the whole of India rests upon the Governor-General, he should have such wide powers to give directions to the Governor.

It will be found that the clause has been very generally worded and can extend to and cover any action of a Provincial Government. It was in the exercise of this

power that the Governor-General issued orders in February 1938 to the Governors of the United Provinces and Bihar preventing the wholesale release of political prisoners in those provinces in spite of the fact that the measure was initiated and sanctioned by the responsible Ministers of the provinces, backed by their respective legislatures

PROCLAMATION OF EMERGENCY. Under section 102, if the Governor-General has in his discretion declared by a Proclamation that a grave emergency exists whereby the security of India is threatened whether by war or internal disturbance, the federal legislature has power to make laws for a province or any part of it with respect to any of the matters enumerated in the Provincial Legislative List and therefore reserved to the provinces under normal conditions. But this did not include the power to make rules under an Act which is an exercise not of legislative but of executive authority. Nor was any provision made in the Act to equip the Central Government, in such times of emergency, with an overriding executive authority throughout the country.

AMENDMENT MADE IN 1939. This was considered by His Majesty's Government and the Government of India to be a serious omission in the constitutional framework, and Parliament was persuaded to rectify the mistake by amending the Act in 1939. The amendment added, among other things, a new section to the Act of 1935 for the purpose of furnishing the Central Government in times of war with supreme direction and control over the whole of British India. This is section 126A, which consists of two clauses.

ITS PROVISIONS It prescribes that when a Proclamation of Emergency is in operation whereby the Governor-General has declared that the security of India is threatened by war (not by internal disturbances, this section does not extend to them), the Federal Government can give directions to a province as to the manner in which its executive authority is to be exercised. It also provides that a federal law made for a province in regard to any subject can con-

fer powers and impose duties upon the Federation or any of its officers in respect of that subject. They are thus authorized to take, in times of war, executive action in the exclusively provincial sphere by appointing their own officers or agents to function in the provinces.

The Secretary of State, when introducing the second reading of the Amending Bill in the House of Lords, declared that it was simply and solely a war measure and did not initiate any new principle but merely implemented what was already provided for by section 102. He considered that in the exigencies of a modern war it was quite necessary that the Central Government should exercise the general powers of superintendence, direction and control which it enjoyed in the past. On the other hand, nationalist opinion in India severely criticized the new measure as an invasion on provincial autonomy and the rights of the Indian people.

3. The Financial Powers and Resources of a Province

DEMOCRACY IS EXPENSIVE The success of a democratic government depends, to a very great extent, on the size and volume of its purse. A government by and for the people must necessarily endeavour to elevate the people and to bring happiness and the joy of life to the masses. It must create public services and public utilities of various kinds and help to raise the material and spiritual level of the whole community. The justification of democracy is the belief that it can become a mighty force of general progress. The fulfilment of that ideal entails an enormous expenditure of money. If the necessary amounts are not forthcoming, the real objective of the democratic form of government will not be easily achieved.

REVENUES FROM THE PROVINCIAL LEGISLATIVE LIST The history of provincial finance in India is long and chequered. A brief reference has been made to it in the chapter on Federal Finance¹. The Act of 1935 has distributed subjects between the Federal and Provincial

¹ See pp 182-90

Governments by the compilation of separate Lists. It must be clearly understood that all revenues derived from subjects in the Federal List will naturally go to the Federation. Similarly, all revenues obtained from subjects in the Provincial Legislative List will be taken by the provinces. But some additional sources of income are also provided for the latter, and they have been specified in Part VII of the Act. A distinguished financial expert, Sir Otto Niemeyer, was subsequently asked to make recommendations for determining some important details which were not laid down precisely in the Act. His report was published in 1936 and all the suggestions it contained were accepted. They were subsequently embodied in a separate Order-in-Council.

The following are the main sources of income to the provinces from subjects enumerated in the Provincial Legislative List: land revenue, excise duties on alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs; non-narcotic drugs, medicinal and toilet preparations containing alcohol; taxes on agricultural income, taxes on lands and buildings, hearths and windows; duties in respect of succession to agricultural land; taxes on mineral rights; capitation taxes; taxes on professions, trades, callings and employments, taxes on animals and boats, taxes on the sale of goods and advertisements, cesses on the entry of goods in a local area, taxes on luxuries including taxes on entertainments, amusements, betting and gambling, stamp duty in respect of documents other than those specified in the Federal Legislative List, duties on passengers and goods carried on inland waterways, tolls, fees in respect of any matters contained in the Provincial Legislative List. The Amendment Act added two more items, namely taxes on vehicles suitable for use on roads whether mechanically propelled or not, and taxes on the consumption or sale of electricity excepting the electricity consumed by or sold to the Federal Government or consumed in the construction, maintenance or operation of a federal railway.

The U. P. Government put a wide interpretation on

their power to impose a tax on employments and callings; and enacted in 1939 an Employment Tax bill which sought to impose a substantial graded tax on incomes derived from employment in the province. In a large number of cases the taxes would have amounted to ten per cent of the employee's income. It was felt that this sort of imposition was nothing less than an income-tax in disguise and that it trespassed upon the federal field of revenue. The bill was therefore reserved for the assent of the Governor-General. In the meantime, opportunity was taken, when Parliament was considering the Amending Bill, to put this matter beyond dispute and make clear the distinction between taxes on income on the one hand and taxes on professions, trades, callings and employments on the other. Municipalities and local boards in many provinces had been empowered to levy rates for local purposes on these items long before the Act of 1935, and it was to keep alive this right that they were included in the Provincial Legislative List. The incidence of such taxes on individual tax-payers was of course small. The Amendment Act¹ limits the amount which might be levied upon any individual in any one year under the heading 'tax upon professions, trades, callings and employments' to Rs 50, and thus restricts it to the purpose for which it was originally designed. The Federal and Provincial Legislative Lists have been amended accordingly, and a new section, section 142-A, has been added to the Act.

ADDITIONAL SOURCES Over and above the proceeds of taxation in respect of matters in their own sphere, the provinces will now have the following potential sources for obtaining further income for their own use:

(1) Duties in respect of succession to property other than agricultural land, stamp duties in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, insurance policies, etc., terminal taxes on goods and passengers carried by railway or air; taxes on railway fares and freights. All these taxes will be levied and collected by the Federation, but their net

¹ *India and Burma (Miscellaneous Amendments) Act, 1940.*

proceeds are not to be credited to federal revenues. They will be wholly assigned to the provinces and distributed among them as prescribed by an Act of the federal legislature. The Federation can however levy a surcharge on these taxes for its own purposes.

(ii) Income-tax : this item has been a wholly central source of revenue till now. Even hereafter, it will continue to be levied and collected by the Federation. But section 138 provides that a prescribed percentage of the net proceeds in any financial year of such a tax should be assigned to the provinces and distributed among them in a manner prescribed. Sir Otto Niemeyer was asked to make recommendations about these details and they have now been carried out. It has been decided, after the Niemeyer Report, that 50 per cent of the net proceeds of this tax should be assigned to the provinces for their use. The percentage of the share of each province from the total amount that is available for distribution among them is fixed as follows : Bombay and Bengal, 20 per cent each, Madras and the United Provinces, 15 per cent each; Bihar, 10 per cent, Punjab, 8 per cent, the Central Provinces, 5 per cent, Assam, Orissa and Sind, 2 per cent each, and the North-West Frontier Province, 1 per cent.

However, this arrangement was not intended to take effect immediately on the inauguration of provincial autonomy. The Government of India had been impeded by severe financial stringency for several years before 1937. Its income had dwindled, and there were serious deficits in its budgets. Its expenditure was declared to have reached an irreducible minimum. The new constitution also inevitably added to its financial burden. In such a state of unstable equilibrium, it is considered risky for the Central Government to part with a substantial fraction of its own assets. The Act has therefore provided that no portion of the income-tax receipts may be granted to the provinces as long as the Government of India felt that it could not afford to do so. Sir Otto Niemeyer recommended that for a period of ten years, the central authority should be permitted to retain

the whole or part of that amount for their own expenditure. There was therefore no hope of any immediate assistance or relief to the provinces from this particular source.

However, there was an agreeable surprise when it was announced in March 1938 that the Government of India had found it possible to allot to the provinces a small sum of Rs 125 lakhs out of their income-tax revenue of the financial year 1937-8. Out of that total each province received the following amount.—Bombay and Bengal, Rs 25 lakhs each, Madras and the United Provinces, Rs 18½ lakhs each, Bihar, Rs 12½ lakhs, the Punjab, Rs 10 lakhs, the Central Provinces, Rs. 6½ lakhs, Sind, Orissa and Assam, Rs 2½ lakhs each; and the North-West Frontier Province, Rs 1½ lakhs.

(iii) Duties on salt; federal duties of excise, export duties—these will be levied and collected by the Federation. But the whole or part of the net proceeds may be paid to the provinces by an Act of the federal legislature, and the principles of distribution among them will be formulated by the Act. It was also laid down in the Act of 1935 that fifty per cent or more of the net proceeds of the export duty on jute shall be assigned to the jute-producing provinces in proportion to their production. The Niemeyer Report recommended—and the recommendation was accepted—that 62½ per cent of the net proceeds of the jute export duty be assigned to the provinces in which jute is grown. Bengal and Assam are the chief gainers by this concession.

FINANCIAL SOLVENCY OF THE FEDERAL UNITS It is a matter of primary importance that the units of a federation should be solvent. Their respective revenues and expenditure must balance. The grave financial condition of any province cannot be looked upon as the domestic concern of that particular unit, it affects the whole country and must be taken cognizance of by the Central Government. Section 142 therefore makes a provision for grants-in-aid by the Federation to such provinces as His Majesty may determine to be in need of money.

BUDGETARY POSITION OF THE INDIAN PROVINCES

Accordingly, an effort was made to investigate the existing and prospective budgetary position of all the provinces that were proposed to be united into the Federation of India. Sir Otto Niemeyer also examined the question. It was found that some of the provinces were so deficient in resources that, with their own revenues only, they could not maintain an administration of the minimum standard of efficiency. There were also other provinces like the North-West Frontier Province in which strategic considerations transcended all other claims. The military expenditure incurred by these units, though geographically it falls within their area, is really incurred for the whole country. That huge burden obviously should not be shifted to, nor can it be borne by, the limited means of the province alone.

SUBVENTIONS TO CERTAIN PROVINCES It was therefore decided that in all such cases where the need for assistance is clearly proved, the Federal Government should make grants-in-aid every year from its own revenues. The following figures were recommended in the Niemeyer Report: the United Provinces, Rs 25 lakhs for five years, Assam, Rs 30 lakhs; the North-West Frontier Province, Rs 100 lakhs, to be reconsidered after five years, Orissa, Rs 40 lakhs, increased to Rs 47 lakhs in the first year and to Rs. 43 lakhs in the second, third, fourth and fifth year; Sind, Rs 105 lakhs, increased to Rs 110 lakhs in the first year and diminished after the tenth year by large sums every year so that the whole subvention may be wiped out within about forty years.

THE POWER OF BORROWING CONFERRED ON THE PROVINCES The power of borrowing money upon the security of its revenue has been conferred upon the province by section 163. The conditions and limits of such loans are to be determined, from time to time, by an Act of the provincial legislature. No moneys can be borrowed outside India without the consent of the Federation. The latter may also make loans to a province or give a guarantee in respect of loans raised by a province.

AUDITOR-GENERAL. Under section 167, His Majesty may appoint a separate Auditor-General for a province, if its legislature so desires, and charge, by an Act, his salary on the revenues of the province. But no such appointment will be made till at least three years have elapsed after the date of the passing of the provincial Act. It is the duty of the Auditor-General to prepare accounts and also to audit them. At present that duty is performed for the Central Government and for all the provinces by the Auditor-General of India, who is appointed by His Majesty and is endowed with great independence and authority.

XXIV

THE PROVINCIAL EXECUTIVE : THE GOVERNOR

TWO CONSTITUENTS THE GOVERNOR AND THE COUNCIL OF MINISTERS The executive government in the province is composed of the Governor and a Council of Ministers. The Governor is not merely a titular head, but an actual, *de facto*, ruler. He has always been in possession of large powers and his influence over the administration, both legal and personal, is enormous. He was described as the keystone of the dyarchical structure which was inaugurated by the Montford Reforms. Even in the administration of autonomous provinces which have been formed by the Act of 1935, the Governor holds a unique, pivotal position. It is necessary to understand clearly the part which he is called upon to play in the operation of self-government in the provincial sphere. The duties of the Council of Ministers, its composition and method of working, will also require detailed study. For convenience, it is best to split up the two constituents of the provincial executive and to treat them separately. That is done in the following pages.

1. Appointment, Qualifications and Salary

GOVERNORS OF THE THREE PRESIDENCIES The office of Governor is very old in the history of British India. It has been in existence for nearly three centuries. Till the middle of the eighteenth century, the duties of the Governors were comparatively simple. They had to organize the purchase and sale of goods on behalf of their masters and to negotiate with the Indian sovereigns for special trading concessions. The number of Governors was only three and they were located in the cities of Madras, Bombay and Calcutta.

THEIR SUBORDINATION TO THE GOVERNOR-GENERAL. When the Company began to be involved in Indian politics, the Governors were called upon to fight wars and to try their hands at diplomacy. It was soon realized that the task of empire-building required a common plan and concerted action on the part of all the officials of the Company serving in different parts of India. The Regulating Act therefore created the office of Governor-General. His supremacy extended in course of time to the whole country. The Governors of provinces lost their independence and became subordinates of the Central Government. But none the less, they have continued to be responsible heads of large territorial areas and have been invested with great prestige and authority.

EQUALITY OF POWERS OVER THE PROVINCES The number of Governors has now increased to eleven in consonance with a similar increase in the number of provinces. In the possession and exercise of powers over the provincial units in their charge, all Governors are absolutely equal. Their control over the administrative machinery of the province is defined in the same constitutional language. The official status and privileges which they enjoy within their respective jurisdictions are identical in all cases. The factors which establish the pre-eminence of the Governor in all aspects of provincial life are similar in every province.

DIFFERENCES IN SALARY AND ALLOWANCES Yet, in spite of this equality in prestige and power, there is a kind of gradation even in the exalted office of Governor. The size of all the provinces is not the same. Some are extensive and populous, others are comparatively small. Some are industrially and commercially advanced and have therefore a large revenue. Others are predominantly agricultural and are endowed with smaller resources. Some have a historical tradition of long standing, others are of recent growth. This difference in the material circumstances of the provinces is reflected in the salaries and allowances that are sanctioned for their Governors. All these high dignitaries do not receive

SALARIES AND ALLOWANCES PAYABLE TO PROVINCIAL GOVERNORS

Name of province	Annual salary	Annual Allowances									Equipment and travelling charges when appointed from Europe	Leave allowances per month
		Renewal of furniture	Maintenance of furniture	Military Secretary and establishment	Surgeon and his establishment	Band and Bodyguard	Tour expenses	Sumptuary allowances	Miscellaneous including maintenance of cars	Total		
	Rs	Rs	Rs	Rs	Rs	Rs	Rs	Rs	Rs	Rs	£	Rs.
Madras	1,20,000	14,000	21,500	1,12,000	36,600	1,69,000	1,13,000	18,000	92,000	5,76,100	2,000	4,000
Bombay	1,20,000	23,000	25,000	1,36,000	33,600	1,23,000	65,000	25,000	1,08,000	5,38,600	2,000	4,000
Bengal	1,20,000	20,500	34,000	1,21,000	34,800	1,50,000	1,22,000	25,000	1,00,000	6,07,300	2,000	4,000
United Provinces	1,20,000	4,000	14,500	1,16,000	..	..	1,25,000	15,000	23,000	2,97,500	1,800	4,000
Punjab	1,00,000	3,000	10,500	88,000	..	..	60,000	12,000	21,700	1,95,200	1,500	4,000
Bihar	1,00,000	4,500	13,000	75,000	..	..	60,000	6,000	21,700	1,80,200	1,500	4,000
Central Provinces and Berar	72,000	2,900	9,800	61,000	..	..	26,000	6,000	16,600	1,22,300	1,200	3,000
Assam	66,000	1,000	4,000	63,000	..	..	55,000	6,000	14,100	1,43,100	1,200	2,750
North-West Frontier Province	66,000	1,750	5,000	68,000	..	..	18,000	6,000	14,100	1,12,850	1,200	2,750
Sind	66,000	1,000	4,000	59,000	..	..	30,000	8,000	17,800	1,19,800	1,200	2,750
Orissa	66,000	2,500	8,000	40,000	..	..	35,000	6,000	11,500	1,03,000	1,200	2,750

the same emoluments. There are considerable variations, as is shown by the figures in the statement on page 237.

DIFFERENCES IN QUALIFICATIONS · PRESIDENCY GOVERNORS. There is a further important distinction. Technically, all Governors are appointed by His Majesty. However, it is a fundamental principle of the British constitution that the King always acts on the advice of his responsible Ministers. It has been a long-established practice that the Governors of the older Presidencies of Madras, Bombay and Bengal are selected on the recommendation of the Secretary of State for India. They are men in the public life of Britain, holding a prominent place in the party in power and often possessing some amount of parliamentary experience. In a few instances—as in the case of Sir John Anderson, Governor of Bengal (1932-7)—they may be distinguished officials in the British Civil Service. But these governorships are definitely put beyond the reach of persons who are serving in India. They are reserved for the ambition and talent of influential members of the British aristocracy and serve as some of the substantial prizes of British public life. These persons are expected to possess the breadth of vision and sympathy which are necessary in governing a foreign people.

GOVERNORS OF THE OTHER PROVINCES On the other hand, the Governors of all the remaining provinces, now eight in number, are selected on the recommendation of the Viceroy. They are senior members of the Indian Civil Service, with a long administrative experience in various departments. They are supposed to have a brilliant official record of industry, tact, and success in the performance of their duties. A young civilian, standing at the lowest rung of the bureaucratic ladder as assistant collector, can hope to rise, through the successive stages of collector, commissioner, and secretary to Government, to the eminence of provincial Governor.

THEY ARE PRIZE POSTS. The substantial salary and the immense powers and status of the office make it one of the strongest inducements to young Englishmen

to join the I.C.S. It is naturally the keen desire of the conqueror to maintain a proper level of efficiency in the Government, as much from the point of view of satisfying British interests and needs as for assuring the contentment of the Indian people. Englishmen of real merit and ability are required to achieve that object. It is felt that the right type of Englishman can be easily persuaded to seek a career in India, if the ultimate prize which he can aspire to attain is big enough to gratify his ambition. The Joint Parliamentary Committee strongly dissented from the suggestion that in future Governors should always be appointed from the United Kingdom and that there should be a statutory prohibition against the appointment of persons who are members of the Indian Civil Service. They expressed their belief that in the future no less than in the past, men in every way fitted for appointment as Governors will be found among members of the Civil Service who have distinguished themselves in India.

ARGUMENTS IN FAVOUR OF APPOINTING CIVILIANS AS GOVERNORS However, the practice has given rise to an interesting controversy. It is argued that a person who is to be appointed to the responsible post of the headship of a province ought, on all reasonable grounds, to be qualified to hold that office, not only on grounds of intelligence or aristocratic connexions or participation in British parliamentary affairs but also on account of extensive and varied experience and intimate personal knowledge of his charge. These latter qualities cannot be expected to be possessed by a total stranger. Further, it is also considered to be a very legitimate aspiration of those who spend a lifetime in a particular sphere that they should have an opportunity to rise to the top. The denial of such an opportunity would be unfair and discouraging.

ARGUMENTS AGAINST APPOINTING CIVILIANS AS GOVERNORS On the other hand, it is asserted with equal emphasis that the Governorships or the Viceroyalty are posts having a unique importance. Their occupants have to deal with men of diverse aptitudes and with

problems of great intricacy, and it is necessary that they should be gifted with wide sympathy and imagination. A ruler's qualifications cannot be correctly measured only in terms of official standards. A bureaucratic mind usually develops a certain rigidity and inflexibility of outlook and becomes impervious to the absorption of new ideas. The head of a state, of all persons, ought to be immune from these defects. This is given as the justification for selecting men from the public life of Britain rather than from the buréaucracy for the governorships of Bombay, Madras and Bengal and the Viceroyalty of India.

A CONSTITUTIONAL DIFFICULTY After the introduction of provincial autonomy, a further complication arises. The administrative machine in the province is now entrusted, in a large measure, to responsible Ministers. Even the most highly placed civilian officials have to work in subordination to their authority. As the Governorships of eight provinces are open to the I.C.S., it may happen that a senior commissioner or secretary who is working under Ministers may find himself suddenly elevated, when a vacancy occurs, to the headship of the province. That was what happened in Orissa in 1938. It would be an untenable position for Ministers to have to accept as their superior and head a person who had been actually working as their subordinate and to whom they had been giving orders as his superiors. To carry on the government under him would cause embarrassment to both the parties and would have a demoralizing effect on the politics of the province.

The Congress Ministry in Orissa took strong objection to the practice and a constitutional crisis was threatened. But ultimately a compromise was arrived at and it is expected that the principle that it established will be followed in all future appointments of Civilian Governors. The impropriety involved in placing a bureaucratic subordinate over the head of his ministerial superiors is sought to be avoided by appointing senior Civilians of other provinces, and not of the province

concerned, to temporary vacancies in the Governor's posts

2. Threefold Classification of his Powers

THE BASIS OF CLASSIFICATION: The powers conferred upon the Governor—as also upon the Governor-General as previously explained¹—by the Act of 1935 can be divided into three categories. He has to act (i) in his discretion, or (ii) in his individual judgement; or (iii) on the advice of his Ministers who are responsible to the legislature. The matters included in each one of these three categories may pertain to any aspect of the administration. They may be executive, legislative, financial, or may concern the public services, and in fact cover the whole field of government. The classification is not based on an enumeration of different departments. It is made by a definition of the manner in which the Governor is called upon to exercise his authority in the task of governance.

POWERS EXERCISED IN HIS DISCRETION Where the Governor is empowered to act in his discretion, he is not required to consult his Ministers at all. He can take decisions by himself and give effect to them. To the extent to which provision is made in the Act for the exercise of the Governor's discretionary powers, there is a real diminution of provincial autonomy. Popularly elected Ministers are deliberately precluded from having any voice in this particular sphere. Some of the most vital subjects of provincial administration are brought under the operation of this arrangement. It has been calculated that there are no less than 32 cases in which the exercise of this power is provided.

POWERS EXERCISED IN HIS INDIVIDUAL JUDGEMENT. Where the Governor is empowered to act in the exercise of his individual judgement, he is expected to do so after consultation with his Ministers. This inference can be drawn from the language of the Act and the Instrument of Instructions and also from the amplification contained in the Joint Parliamentary Committee's

¹ See p 154.

Report. The Governor, of course, is not bound to accept the Ministers' views and can act even in opposition to them. But the procedure of work is so formulated that Ministers can acquaint the Governor with their considered opinions and thereby attempt to influence his decision. Legally, popular Ministers are denied any effective control over the large number of important matters which are assigned to the individual judgement of the Governor. The total number of such cases is calculated to be no less than sixteen in addition to the comprehensive Special Responsibilities. This is another substantial slice cut off from provincial autonomy.

POSSIBILITY OF VOLUNTARY ACTION BY THE GOVERNOR. It may be added that both in the exercise of his discretionary powers and in the exercise of his individual judgement the Governor—and also the Governor-General—is not forbidden by law to consult his Ministers or to abide by their advice. If, of his own free will, he decides to take them into his confidence and share his responsibilities with them, there is nothing to prevent him ordinarily from doing so. In fact, that is the constitutional course which he may normally be expected to follow. The establishment of such precedents is strongly advocated and eagerly looked forward to by politicians both British and Indian. They would appreciably broaden the scope of ministerial, and therefore popular, authority and dissipate the shadow cast by special powers and safeguards. It was generally believed that a practice of this nature was set up, in a larger or smaller measure, in most of the provinces.

GOVERNOR-GENERAL'S CONTROL. However, there is one serious danger of encroachment on this negative liberty which a sympathetic Governor may try to utilize for the positive purpose of building up healthy conventions. It is explicitly laid down in section 54 that when the Governor acts in his discretion or in the exercise of his individual judgement, he will be under the general control of the Governor-General and will have to comply with such particular directions as may be issued by the latter in his discretion. So that, if in an exceptional

instance, a constitutionally-minded Governor voluntarily chooses to consult his Ministers and to act on their advice even in respect of matters which are reserved for his discretion or for his individual judgement, his action may be hampered by orders issued by the superior authority of the Governor-General or ultimately of the Secretary of State. The British Premier's reply to Mr Churchill, referred to in an earlier section,¹ reiterated this constitutional position.

POWERS EXERCISED ON THE ADVICE OF MINISTERS. The third category consists of items in which the Governor has to act on the advice of his Ministers. And as the latter are members of the legislature and responsible to it, the concept of provincial autonomy may be supposed to be tangibly represented by and in this particular domain. The Instrument of Instructions definitely lays down that in all matters within the scope of the executive authority of the province, save in relation to functions which are to be exercised in his discretion, the Governor will be guided by the advice of his Ministers. But to be so guided ought not to prove inconsistent with the fulfilment of any of his Special Responsibilities or with the proper discharge of those functions which have to be performed in the exercise of his individual judgement. Whenever they are involved the Governor is instructed to act in the manner in which he thinks it proper to act, notwithstanding the advice of his Ministers. But the Ministers should not be enabled to rely upon his Special Responsibilities in order to relieve themselves of responsibilities which are properly their own.

HIS PRESENCE AT CABINET MEETINGS. However, it must be noted that the Governor is not excluded from the provincial Cabinet as his master, the King of England, is excluded from the British Cabinet. He is empowered not only to be present at meetings of the Council of Ministers but also to preside over them. He can urge his own views and argue his own points. His participation in the debates is bound to have a considerable effect in shaping the Ministers' attitude with regard

¹ See p 57

to the general policy of government and the disposal of specific questions. His influence will be particularly effective when there are no strongly organized political parties in the province to undertake the formation of responsible Ministries. It is a truism of constitutional science that the presence of the head of the government at Cabinet meetings inevitably tends to prevent the growth of a homogeneous Cabinet and of the principle of joint responsibility. It is of course presumed that even if the Governor does not see eye to eye with the Ministers and actually dissents from their opinions, he will allow them to have their own way and not override their decisions.

3. Relations to Ministers and Executive Powers

EXECUTIVE AUTHORITY IN THE PROVINCE VESTS IN THE GOVERNOR Section 49 of the Act lays down that the executive authority of a province will be exercised on behalf of His Majesty by the Governor. Section 50 lays down that the Governor will have a Council of Ministers to aid and advise him in the exercise of his functions, excepting in so far as he is required by the Act to exercise his functions in his discretion. He is also not prevented from exercising his individual judgement when under the Act he is required to do so. Thus there is no obligation to consult Ministers in the former sphere, there is no obligation to carry out their advice in the latter sphere even though it may be sought and given.

HE APPOINTS MINISTERS Ministers have to be chosen and summoned by the Governor in his discretion and they can be similarly dismissed by him. It is directed in the Instrument of Instructions to the Governor that he should use his best endeavour 'to select his Ministers in the following manner, that is to say, to appoint, in consultation with the person who in his judgement is most likely to command a stable majority in the legislature, those persons (including so far as practicable members of important minority communities) who will best be in a position collectively to command the con-

fidence of the legislature. In so acting he shall bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers.' He must therefore send for the leader of the largest political party in the legislature and ask him to form a Ministry.

POSITION OF THE SECRETARIES BEFORE PROVINCIAL AUTONOMY Before the introduction of provincial autonomy and the system of government by popular Ministries which are responsible to the legislature, the Governor used to summon, as a matter of normal official routine, the secretary to government in every department and to obtain from him information about every important administrative matter. He could thus keep himself acquainted with the detailed operation of the executive machine and take an active part in its day-to-day direction. The secretaries, who were the subordinates of Executive Councillors or Ministers, had the privilege of direct access to the superior of their superiors and of discussing administrative affairs with the head of the government behind their backs.

THEIR POSITION UNDER RESPONSIBLE GOVERNMENT. Whatever may have been the justification for such a system when the government was almost entirely bureaucratic, it could obviously have no reason to exist after the transfer of power into the hands of the representatives of the people. In a parliamentary government the supreme executive authority must vest in the Ministers. Even the Joint Parliamentary Committee admitted that 'if it is to be the Council of Ministers who will in future aid and advise the Governor, it is plain that the Governor can no longer be advised directly and independently by the secretaries to government.' But as even after the Act of 1935 the Governor will continue to have not merely nominal but very real administrative powers, particularly in reference to safeguards and Special Responsibilities, it was not considered feasible to deprive him of the means of getting information about the working of the administrative machine. The necessary provision was therefore made in the Act by section 59

HE MAY PRESIDE OVER THE MEETINGS OF MINISTERS. The Governor, in his discretion, may preside over meetings of the Council of Ministers. He has also, in his discretion but after consultation with the Ministers, to make rules for the more convenient transaction of the business of the Provincial Government and for the allocation of portfolios to Ministers. In order that he should not be ignorant of the happenings in the various departments, the above rules shall include provisions requiring a Minister to transmit to the Governor, and the appropriate secretary to government to bring to the notice of the Minister concerned and the Governor, all important information concerning the business of the Provincial Government and particularly those matters which involve the Governor's Special Responsibilities. Thus Ministers will not be left completely in the dark about what their subordinates, the secretaries, have communicated to the Governor. The Governor will of course be in close touch with the course of provincial administration from day to day and will be able to influence its general trend as well as its details.

NEED FOR A CONVENTION OF NON-ATTENDANCE. In the system of responsible government, the head of the state does not remain present at and actively participate in the meetings of the Cabinet. The Prime Minister, who is the leader of his colleagues, of his party, and of the nation generally for the time being, presides over Cabinet meetings, controls the work of Ministers, and as the elected representative of the people bears the whole burden of policy and governance on his shoulders. If the autonomous Indian provinces are to develop along the same lines, the Governors ought to withdraw from Cabinet discussions.

It may be pointed out that the Act of 1935 does not make it obligatory on them to preside over Cabinet meetings, it is left to their discretion. They can therefore voluntarily remain absent from them and leave all initiative and leadership to the Prime Minister. That would be a logical corollary of the new constitutional position. Probably the practice is being partially adopt-

ed in all the provinces, though exactly to what extent is not known

It must be repeated that as this is a region for the exercise of the discretionary powers of the Governor, he is subject to the orders and directions that may be given to him by the Governor-General and ultimately by the Secretary of State. The growth of particular conventions will therefore be considerably influenced by those authorities. They can help or hinder that process according to their inclinations.

HIS POWERS IN RESPECT OF THE POLICE DEPARTMENT
In the scheme of provincial autonomy, the subject of law and order is entrusted to the authority of a Minister. However, Parliament was not prepared to transfer into the hands of Indians the same amount of power in respect of this subject that it was willing to concede in others. It was considered risky to allow Indian Ministers to have unfettered sway over the Police Department, and it was therefore decided to bring it under the Governor's closer supervision. This has been done by sections 56-8 of the Act. In making, amending, or approving any rules, regulations, or orders relating to any police force, whether civil or military, the Governor is required to exercise his individual judgment. For combating crimes of violence which are intended to overthrow the Government, the Governor has been given special power 'to assume charge, to such extent as he may think requisite, of any branch of government' and to act in his discretion in administering it. He can also, in his discretion, make rules for securing that the sources of information with reference to such crimes shall not be disclosed by any member of the police force except in accordance with the direction of the Inspector-General of Police or the Commissioner of Police, or by any other person in the service of the Crown except in accordance with the directions of the Governor in his discretion.

HIS POWERS IN RESPECT OF THE SERVICES It is one of the primary principles of the Act of 1935 that the superior Services should be kept beyond the reach of

the Indian legislature. The Governor has a Special Responsibility in respect of the public services and the Instrument of Instructions further amplifies it by stating that he must be careful to safeguard the members of the Services not only in any rights provided for them by or under the law, but also against any action which in his judgement would be inequitable. This constitutes of course a very general supervisory power which may interfere with the orders issued by a Minister. Even in the operation of provincial autonomy, the Ministers and legislatures have no control over officials in the Indian Civil Service, the Indian Police Service and others appointed for the province by the Secretary of State, though their salaries are charged on the provincial revenues.

Certain posts are reserved for persons chosen by the Secretary of State. The Governor, in his individual judgement, has to determine the appointments to these posts, transfers, any promotions of the persons holding them, any order relating to their leave if it exceeds three months, and any order suspending them. No order which punishes or formally censures any such person or affects adversely his emoluments or pension can be made, if he is serving in a province, except by the Governor exercising his individual judgement. Appointments of District Judges in a province and their postings and promotions have to be made by the Governor exercising his individual judgement. He has also in his discretion to appoint the chairman and other members of the Provincial Public Service Commission and to make regulations regarding their number, their tenure of office and conditions of service. It will be easily seen from this multiplicity of powers how even in the normal routine of purely administrative matters, the Governor has been placed in a position of unquestioned supremacy.

APPOINTMENT OF ADVOCATE-GENERAL The Governor has to appoint, in the exercise of his individual judgement an Advocate-General for the province. He must possess the same qualifications as are required for being

appointed a high court judge, is to hold office during the pleasure of the Governor, and receive such remuneration as the latter in the exercise of his individual judgement may determine. It is the duty of the Advocate-General to give advice to the Provincial Government upon such legal matters and to perform such other duties of a legal character as may be referred to or assigned to him by the Governor. This provision has been made in section 55. Ministers will naturally prefer to have a legal adviser in whom they have full confidence, and the Governor in making the appointment of the Advocate-General is expected normally to be guided by their advice. But the convention has not been uniformly established that the Advocate-General should, or should be called upon by the Governor to, resign his post along with the Ministry. It was followed in Bombay when the Congress Ministry was formed in 1937, but was not similarly followed at that very time in the Central Provinces and Berar. Even in Bombay the Advocate-General did not resign when the Congress Ministry gave up office in November 1939.

4 Relations to the Legislature and Legislative Powers

SUMMONING, PROROGUING, AND DISSOLVING THE LEGISLATURE, ASSENT TO BILLS The Governor's powers in respect of the legislative chambers and the Bills proposed to be introduced in and passed by them are mentioned in several different sections of the Act¹. The Governor in his discretion can summon the legislative chambers or chamber in a province, can prorogue them and can dissolve the lower house. However, as the conduct of government, including legislation, is entrusted to responsible Ministers, this power will have to be exercised in a manner which will suit their convenience. The initiative and decisions in this respect will therefore automatically tend to lie more with the Prime Minister than with the Governor. Similarly, the Governor can address either chamber singly or both together. He can, in his discretion, send messages to

¹ See sections 62, 63, 74, 75, 76, 84, 86, 108

the legislature in regard to a pending Bill or for any other purpose. Whenever there is disagreement between the two chambers in provinces where the bicameral system has been instituted, the Governor, in his discretion, has to summon a Joint Sitting to remove the deadlock. His assent, given in his discretion, is required for any Bill passed by the provincial legislature. He may withhold that assent or reserve the Bill for the consideration of the Governor-General. He may also return it to the legislature with a message that it should be reconsidered.

MAKING RULES OF PROCEDURE IN CERTAIN MATTERS. The Governor in his discretion but after consultation with the Speaker or President has to make rules for regulating the procedure and conduct of business in the legislature (i) in relation to matters which affect the discharge of those of his functions which have to be performed in his discretion or in his individual judgment, (ii) for securing the timely completion of financial business, (iii) for prohibiting the discussion of or the asking of questions on matters connected with Indian States, and (iv) for prohibiting, save with the consent of the Governor in his discretion, the discussion or asking of questions on foreign affairs, administration of Tribal and Excluded Areas and the personal conduct of the Ruler of an Indian State or his family. Twenty-nine such rules, called the Bombay Legislative Chambers (Governor's) Rules have been framed for Bombay. In a province where there are two chambers, the Governor, after consultation with the President and the Speaker, has to make rules for fixing the procedure of their Joint Sittings.

STOPPING DISCUSSION ON A BILL. If the Governor in his discretion certifies that the discussion of a Bill or clause or amendment introduced or proposed to be introduced in the legislature would affect the discharge of his Special Responsibility for the prevention of any grave menace to the peace and tranquillity of the province, he may in his discretion direct that no proceedings shall be taken in relation to the Bill, clause or amend-

ment. This is an important reserve power which can be used against legislation introduced on the initiative of responsible Ministers.

HIS PREVIOUS SANCTION NECESSARY IN CERTAIN CASES Unless the Governor in his discretion thinks fit to give his previous sanction, no Bill or amendment can be introduced in the provincial legislature if (1) it seeks to repeal or to amend or is repugnant to any Governor's Act, or any ordinance promulgated in his discretion by the Governor, (ii) it seeks to repeal or to amend or to affect any Act relating to any police force

ISSUING OF ORDINANCES (i) *On the advice of Ministers* Till the Act of 1935, the Governors had no power to promulgate ordinances. It was vested exclusively in the Governor-General, who could issue ordinances for a province. In cōsistence with their new status as heads of federal units, that power has now been conferred upon the Governors. Two types of ordinances have been provided for. In one, the promulgation will be made on the advice of Ministers or, in certain cases, in the exercise of the Governor's individual judgement, if, at any time when the legislature is not in session, the Governor is satisfied that immediate action is necessary. Such an ordinance issued under section 88 of the Act must be laid before the provincial legislature and will cease to operate at the expiration of six weeks from the reassembly of the legislature or on an adverse resolution passed by that body. The Madras Temple Entry Indemnity Ordinance and the Bombay Fodder and Grain Control Ordinance were issued in 1939 on the advice of the respective Ministries in accordance with this provision.

(ii) *In his discretion* The other type of ordinance, mentioned in section 89, is of a more absolute character. If at any time—that is, whether the legislature is in session or not—the Governor is satisfied that immediate action is necessary for the discharge of those of his functions which have to be performed in his discretion or in the exercise of his individual judgement, he may promulgate an ordinance as he thinks fit to do. It

need not be laid before the provincial legislature at any time and can continue to be in operation for a maximum period of six months at a stretch, to be followed by a further extension not exceeding six months if found necessary.

CERTIFICATION IN A MORE DIRECT FORM The Montford Reforms had created a new weapon for use by the Governor-General and the Governor. It was called the power of Certification. The Act of 1935 has not only retained that instrument of absolutism but made it much simpler to operate. The process of certification required that a Bill should first go to the legislature, should be rejected by it and then should be certified by the Governor into an Act. In the new system, even the semblance of consultation with or consideration by the legislature may be dispensed with. The position is made quite clear by section 90 of the Act, and also by the comments of the Joint Parliamentary Committee.

THE GOVERNOR'S ACTS It is laid down that if at any time it appears to the Governor that certain legislation is necessary for the discharge of those of his functions which have to be performed in his discretion or in his individual judgement, he can adopt one of two courses: (1) he may enact forthwith a Governor's Act containing such provisions as he considers necessary, or (ii) he may send to the legislature the draft of a Bill which he considers necessary. In the latter case, the legislature may present an address to the Governor, within a period of one month, expressing its opinion on the Bill. He may thereafter pass it into a Governor's Act, either with such amendments as he deems necessary or in its original form.

These Governor's Acts have the same force and effect as Acts passed by the provincial legislature. However, they have to be communicated through the Governor-General to the Secretary of State and put before each House of Parliament by him. A single mortal head of a Provincial Government is thus enabled, in the plenitude of his wisdom and authority, to defy the collective opinion of scores of elected representatives.

who constitute the legislature of the province. Even as an extraordinary provision, it suggests an incongruous despotism in the picture of what is alleged to be full provincial autonomy.

5. Financial Powers

CAUSING THE BUDGET TO BE PREPARED The Governor has considerable powers in matters of finance¹ It is his duty to see that for every financial year a budget is prepared for the province and laid before its legislature The statement must show separately items on which that body will be called upon to vote expenditure and items whose expenditure is charged on provincial revenues The question whether a particular item is or is not included in the latter category has to be decided by the Governor in his discretion.

POWER TO RESTORE CUTS IN THE VOTABLE ITEMS In respect of the votable portion of the budget, the Legislative Assembly of the province can assent to, refuse, or reduce any demand But if, in the opinion of the Governor, the refusal or reduction of any such grant would affect the due discharge of any of his Special Responsibilities, he can restore, wholly or partly, the cuts that may have been made by the Assembly This is also a pernicious reproduction of the old power of certification No demand for a grant can be made except on the recommendation of the Governor The Governor has to authenticate by his signature a schedule signifying (i) the grants made by the Assembly in the votable part of the budget, including the cuts restored by him if any, and (ii) sums required for expenditure charged on the revenues of the province. No expenditure from the revenues of a province is deemed to be duly authorized unless it is specified in the schedule so authenticated

BILLS TO BE INTRODUCED ON HIS RECOMMENDATION. Bills or amendments on the following subjects cannot be introduced in the provincial legislature except on the recommendation of the Governor (i) for imposing or

¹ See sections 78-82 of the Act

increasing any tax; (ii) for regulating the borrowing of money or the giving of any guarantee by the province; (iii) for declaring any expenditure to be expenditure charged on the revenues of a province or for increasing the amount of any such expenditure.

6. Special Responsibilities

THE POLICY OF THE ACT. The Act of 1935 is full of many reservations and safeguards. The grant of political power has been invariably accompanied by certain restrictions or other counteracting provisions which minimize the extent of the grant. In pursuance of that policy, a new class of obligations has been created under the constitution. They are known as the Special Responsibilities of the Governor-General¹ and the Governor, and those high officials are required to fulfil them in the exercise of their individual judgement.

KINDS OF SPECIAL RESPONSIBILITIES. The following list has been enumerated for the Governor in section 52: (i) The prevention of any grave menace to the peace and tranquillity of the province; (ii) the safeguarding of the legitimate interests of the minorities; (iii) securing the rights and the legitimate interests of the Services; (iv) the prevention of any kind of discrimination against British citizens in the sphere of executive action; (v) securing the peace and good government of the Partially Excluded Areas; (vi) protection of the rights of any Indian States and the rights and dignity of their rulers; (vii) securing the execution of the orders and directions issued by the Governor-General in his discretion.

PROVISIONS FOR C. P. AND BERAR AND SIND. The Governor of the Central Provinces and Berar has also the Special Responsibility of securing that a reasonable share of the revenues of the province is expended in or for the benefit of Berar. The Governor of Sind has the Special Responsibility of securing the proper administration of the Lloyd Barrage and Canals Scheme.

THE COMPREHENSIVE NATURE OF SPECIAL RESPONSIBILITIES

¹ See pp 157-9

LITIES It will be easily seen that the object of defining these Special Responsibilities is not merely to set aside a distinct group of departments for the personal management and attention of the Governor. They do not attempt to introduce a division of the Provincial Government into two sections, one handed over to the Ministers in which they can have complete freedom, and the other retained and reserved for the Governor. In fact, they are generic in their conception and can be interpreted to apply to the whole sphere of the Provincial Government.

ILLUSTRATIONS For instance, as the Joint Parliamentary Committee has emphasized, the peace and tranquillity of a province may be believed to be endangered by what may be construed to be the undesirable activities of any department of state. Similarly, the minorities and the Services are inevitably present in every aspect of administration. The possibility of discrimination against British citizens in any manner can also exist in every subject. The range of the Governor's supervision and the scope for his superior action are therefore extremely comprehensive.

VAGUE EXPRESSIONS Further, it must be realized that the terms 'grave menace', 'legitimate interests', 'discrimination', 'peace', 'rights', 'dignity', etc., are very vague and elastic. According to the viewpoint and interest of the user, they can be made to yield a meaning of different degrees of intensity and application. A Governor who is fond of power would find them to be convenient excuses for interference. By putting a wide construction on all their implications, he could constantly encroach on the work of responsible Ministers.

7. Emergency Powers

RISE OF AN EMERGENCY In the working of the parliamentary system in Britain, a constitutional crisis would lead either to the resignation of Ministers or to the dissolution of Parliament, and the dispute is ultimately settled by the verdict of the electorate. There may be brought about a change, but not a paralysis, of govern-

ment. But the position in India is different. The Act of 1935 and the constitutional structure that it creates are essentially based on the doctrine of self-government with safeguards. They leave the ultimate authority over India in many important respects in the hands of the British people.

DEADLOCK IN GOVERNMENT. The possibility of a grave conflict is inherent in such a situation. The Governor representing the British Parliament may disagree with his responsible Ministers and the provincial legislatures on some crucial issues, and neither the public opinion in Britain nor the public opinion in India may be in a mood to yield. The majority party in the provincial legislatures may then refuse to form a Ministry and may not allow others to form it. There would thus be a complete deadlock, and the machinery of government as provided for in the Act would fail to operate. All administration would be threatened with stoppage.

ISSUE OF PROCLAMATIONS. The Act has made special provisions to meet abnormal situations of this type. Section 93 empowers the Governor to issue a Proclamation if at any time he is satisfied that a situation has arisen in which the government of the province cannot be carried on in accordance with the provisions of the Act. By such a Proclamation the Governor may (i) declare that his functions shall, to such extent as may be specified in the Proclamation, be exercised by him in his discretion, and (ii) assume all or any of the powers vested in, or exercisable by any provincial body or authority. The Proclamation may contain all such incidental and consequential provisions as may be necessary, and may suspend, in whole or in part, the operation of any provision of the Act relating to any provincial body or authority, except the High Courts.

THE PERIOD OF THEIR CONTINUANCE Such a Proclamation has to be communicated forthwith to the Secretary of State and to be laid by him before each House of Parliament. It must cease to operate at the end of six months after it is issued, unless allowed to be further continued by resolutions of Parliament. In no case,

however, can it remain in force for a period of more than three years.

LAWS PASSED IN AN EMERGENCY. If by such a Proclamation the Governor has assumed to himself any power of the provincial legislature to make laws, a law made by him in the exercise of this power will continue to have effect for a period of two years after the Proclamation has ceased to have effect. However, even before this period has elapsed such a law made by the Governor may be repealed or re-enacted by the provincial legislature.

This law-making power is not to be confounded with the power, vested in the Governor by section 90, to enact what are known as Governor's Acts¹. These measures have no statutory limit on their duration and can be issued even in normal times when the constitution of the province is still functioning.

CONCURRENCE OF THE GOVERNOR-GENERAL NECESSARY. A Proclamation of this kind has to be issued by the Governor in his discretion and with the concurrence of the Governor-General, given in his discretion. It may be revoked or varied by a subsequent Proclamation.

Thus all the executive and legislative work in the province can be temporarily taken over by the Governor directly, and the wheels of the administrative machinery can continue to be moved by his driving force, till normal conditions are restored.

SUSPENSION OF THE CONSTITUTION IN EIGHT PROVINCES. Within less than three years of the introduction of provincial autonomy, the Governors of eight provinces—Bengal, the Punjab and Sind were the exceptions—were unexpectedly called upon to exercise this emergency power, and to suspend the normal working of the provincial constitution. The British Government's declaration of their war aims, particularly with reference to India's right of self-determination, was considered to be unsatisfactory by the Indian National Congress, and in pursuance of the mandate issued by that body the Congress Ministries resigned their posts early in

¹ See pp. 251-3

November 1939 As the Congress party held a majority of seats in the legislatures of eight provinces, the formation of alternative Ministries in them was impossible. Even the dissolution of the legislatures would not have changed their political complexion, and matters would not have improved

APPOINTMENT OF ADVISERS TO THE GOVERNOR. In these exceptional circumstances, the Proclamation authorized by section 93 was issued by the Governors concerned with the previous concurrence of the Governor-General, and from the first week of November 1939 all powers of government within their respective territorial zones were assumed by them. Since then, the administration of most of these provinces (section 93 was subsequently withdrawn in Orissa and Assam and Ministries were established in them) has been carried on by the Governor with the assistance of Advisers, either two or three in number, who were specially appointed by him. They were not selected from non-official politicians but were senior members of the I.C.S. serving in the province. There has thus been a complete reversion to bureaucratic rule.

As the period of six months since the issue of the Proclamations of Emergency by the Governors in November 1939 was coming to an end and as no solution of the political crisis in India was in sight, both the Houses of Parliament passed in April 1940, and subsequently Resolutions permitting the further continuance of the Proclamations.

A GOVERNOR'S ACT ENACTED IN BOMBAY The Governor of Bombay has taken over the government of the province by a Proclamation issued in the beginning of November 1939. In the exercise of the powers which were thus assumed he thought it necessary to enact a Governor's Act in April 1940. The Congress Ministry while in office had initiated the policy of prohibition, and certain regulations and notifications had been issued by the Government under the Abkari Act for the purpose of implementing that policy and preventing people from being in possession of liquors and intoxicating drugs.

But a Special Bench of the Bombay High Court decided, after hearing certain appeals that were referred to it, that such notifications and regulations were *ultra vires* and could not have legal effect. The decision would have had the result of frustrating a policy which had been inaugurated by responsible Ministers with the full support of a democratically elected legislature; and this too at a time when those bodies had ceased to function and could not therefore take prompt and effective measures to safeguard the reform. The Governor also felt that the ruling of the High Court would create administrative chaos because it would apply to a part of the regulations and would leave other parts untouched.

He therefore enacted a Governor's Act to make the necessary amendments in the Abkari Act so that dislocation of the administration of excise policy could be avoided. The Act also indemnified all officers for actions taken by them in good faith before the decision of the High Court. The experiment of prohibition was thus kept alive and saved from an abrupt and unforeseen wreckage, and the step taken by the Governor was highly commended. It must be remembered that this Governor's Act was not enacted under section 90,¹ but under powers obtained in virtue of section 93.

8. Instrument of Instructions

FLEXIBILITY REQUIRED IN CONSTITUTIONAL DEVELOPMENT The Joint Parliamentary Committee expressed the opinion that the adoption of the English constitutional form need not imply the establishment in each province of a system analogous in all respects to that which prevails in England. Constitutional usages and practice which may be eminently adapted to the circumstances of Britain may be found unsuitable to Indian conditions. India's political development must be in harmony with her own traditions and circumstances. It must also be marked by a flexibility and capacity for adjustment which would make continuous progress

¹ See pp 252-3

possible without any alteration in the existing form of government

PRECEDENT OF THE DOMINIONS CONSTITUTIONS The Dominion and Colonial constitutions have followed the British model. The Committee has pointed out how those who framed them had recourse to the device of what is known as the Instrument of Instructions in order to impart the necessary flexibility to their working. Apart from the specific obligations imposed by a parliamentary Act, the Instrument indicated to the Governor-General or Governor how far he should regard himself bound by English precedent and analogy. It preserved a sphere in which constitutional evolution might continue without involving any change in the legal framework of the constitution itself.

PURPOSE OF THE INSTRUMENT OF INSTRUCTIONS. It was recommended that Instruments of Instructions might similarly be issued to the Governor-General and Governors in India. They should amplify the meaning and spirit of some of the provisions of the Act, particularly those that define the powers, responsibilities and duties assigned to and imposed on those high officials, and lay down particular practices and procedure. That would help to give flesh and blood to the legal skeleton of the constitution and to mould its living shape.

The Joint Parliamentary Committee also explained that the Instrument would have vital importance in the evolution of the new Indian constitution. For example, Ministers have no constitutional right, under the Act, to tender advice to the Governor upon matters which are placed in the Governor's discretion, though he could and often would consult them. If at some future time it seemed that this power of consultation might be made mandatory and not permissive, the Committee think that there would be nothing inconsistent with the Act in an amendment of the Instrument for such a purpose.

The Instrument of Instructions was intended to serve two purposes. It could clarify certain constitutional injunctions contained in the Act and prescribe usages and conventions to be followed in certain important matters.

The Instrument could also be utilized to stimulate constitutional progress without introducing any structural change in the Act

Section 53 lays down the procedure for the issue of an Instrument of Instructions to the provincial Governor (and section 13 to the Governor-General). It is issued by His Majesty, but the draft is prepared by the Secretary of State and approved of by both Houses of Parliament. Amendments to the Instructions previously issued have also to be approved by Parliament. The authority of that body in determining the stages of the political progress of India even by such an indirect method is fully asserted.

The Instructions are intended to guide the Governor and he is expected to carry them out. However, the Instrument has not the same validity as a law, and no action can be declared illegal on the ground that it did not accord with the Instrument of Instructions. There are twenty-one clauses of the Instrument that was issued soon after the Act of 1935 was passed and they refer to matters concerning the executive authority of the province and the legislature

The following is a brief summary

A INTRODUCTORY

I-VI These clauses lay down the procedure for the taking and administering of oaths and also require that the Governor shall not quit India without obtaining leave

B IN REGARD TO THE EXECUTIVE AUTHORITY

VII Ministers should be appointed in consultation with the person who is most likely to command a stable majority in the legislature. As far as practicable they should include members of the important minority communities. A sense of joint responsibility should be fostered among them and they should be in a position collectively to command the confidence of the legislature.

VIII The Governor should be guided by the advice of his Ministers except when he is required to act in his discretion or in his individual judgement. But the Ministers should not be enabled to rely upon his Special

Responsibilities in order to relieve themselves of their own.

IX The minorities mentioned in the Act are racial and religious and not political. The Governor has to secure a due proportion of appointments in the Services to the different communities.

X. The Services are to be safeguarded from any inequitable executive action, in addition to the protection of the rights guaranteed to them

XI Discrimination against British interests of any kind is to be prevented, even if it means differing from the Ministers

XII. Ministers should not be allowed to take action which would imperil the economic life of any Indian State, and affect prejudicially any of its rights.

XII. (a) The Governor of Berar has to pay due regard to the commercial and economic interests of the Hyderabad State

XIII Rules of business should be so framed that the Finance Minister should be consulted upon all proposals that affect the finance of the province, and reappropriations within a grant

XIV. The Governor should keep himself well informed about the conduct of irrigation in his province.

XV The Governor may appoint an officer for the Excluded or Partially Excluded Areas within his charge.

XV (a) The Governor of the North-West Frontier Province should be particularly careful about his duties in regard to the Tribal Areas.

C MATTERS AFFECTING LEGISLATURES

XVI. In giving assent to or withholding it from Bills, the Governor should pay particular regard to his Special Responsibilities

XVII The following Bills or clauses will have to be reserved for the consideration of the Governor-General

1 If it repeals or is repugnant to an Act of Parliament

2. If it derogates from the power of a High Court

3. If it creates a doubt that it offends against the

purposes of Chapter 3, Part V of the Act in respect of discrimination against British interests.

4 If it alters the character of the Permanent Settlement in Bengal and other areas. However, the Governor's previous sanction to the introduction of a Bill on this subject is not to be refused.

XVII. (a) The Nizam's assent is to be stated in respect of Bills that apply to Berar

XVIII Proceedings on a Bill or amendment should be stayed only if its public discussion itself would endanger peace and tranquillity

XIX Nominations to the Legislative Council should be made to redress inequalities and to secure representation to women and the scheduled castes.

D GENERAL

XX The Governor should try to maintain standards of good administration, to promote moral, social and economic welfare, to secure among all classes and creeds, co-operation, goodwill and mutual respect for religious beliefs and sentiments, etc

XXI These Instructions should be communicated to Ministers and also published in the province

APPENDIX

This contains forms of the oath of allegiance, the oath of office and the oath of secrecy for Ministers.

9. Secretarial Staff of the Governor

APPOINTMENT OF THE STAFF AND THEIR SALARIES It will be easily realized from the foregoing description that the Governor is not merely a titular head of the province, but is required to perform a large number of duties and play an active part in the administration of the province. It is therefore considered essential that he should have at his disposal an adequate personal and secretarial staff to assist him in the fulfilment of his obligations. Accordingly, section 305 of the Act provides that every Governor (and also the Governor-General) shall have his own secretarial staff, appointed by him in his discretion. The salaries and allowances

of persons so appointed and the office accommodation and other facilities to be provided for them are to be determined by the Governor in his discretion. All the expenses incurred in this connexion are charged on the revenues of the province and are therefore non-votable by the legislature.

SECRETARY TO THE GOVERNOR. The Joint Parliamentary Committee suggested that at the head of this staff there should be a capable and experienced officer of high standing. He should be fully conversant with the current affairs of the province and in close contact with the administration. However, the Committee did not contemplate that he should be a kind of Deputy-Governor. In their view his duties would vary from time to time as constitutional usage and practice grow. In some respects he would occupy the position formerly filled by the Governor's Private Secretary, but would have duties of a wider and more responsible character. The Committee recommended that he should be designated as Secretary to the Governor, and the recommendation has been carried out. Every Governor has now such a Secretary, who is a fairly senior member of the I.C.S. serving in the province.

10. Importance of the Office

HE IS NOT MERELY A CONSTITUTIONAL HEAD. The cumulative effect of all these powers, normal and special, ordinary and extraordinary, legislative, executive and financial, makes the position of the Governor extremely formidable, if not invincible, in the working of the Provincial Government at least in the strictly legal interpretation of the constitution. By no stretch of imagination can he be described, nor is he intended to be, a mere constitutional head, a dignified ornament which shines with light but is without life. Even in what is advertised to be provincial autonomy, he can prove to be a decisive force. During the earlier two or three years of the working of the new scheme, the Governors do not seem to have attempted to impose their will upon the popular Ministries by threatening to exercise their legal

powers though subsequently complaints about their undue interference have been publicly made. It is hoped that a healthy convention of non-interference will help to set up real democracies in the Indian provinces.

REPRESENTATIVE OF THE CONQUERING POWER. Even in a free country, such a dominant position of the *de jure* head of a state would be incompatible with the principle of ministerial responsibility. In a conquered country the situation becomes worse, because the Governor is also the representative of the sovereign masters. He is specially commissioned to be the custodian of their interests and is not therefore divested of his active constitutional authority.

THE PROVINCIAL EXECUTIVE: THE COUNCIL OF MINISTERS

1. Appointment

FEATURES OF A RESPONSIBLE DEMOCRACY. Democracy is a form of government where the people govern themselves. There are different kinds of democracy. In a country like England it works on what is described as the parliamentary principle. The people are fully represented in the legislature which is elected by adult suffrage, and the leaders of such a legislature are invested with executive direction and authority. They become Ministers of the state and direct its affairs as long as the majority of the legislature and the nation has confidence in them. In the last resort therefore the people make and control their government.

THE IDEAL FOR INDIA The Indian polity has also to be shaped in accordance with the ideals of democracy and preferably of the parliamentary or responsible type. The introduction of provincial autonomy is supposed to be a step in that direction. Therefore the pertinent questions to be asked are, is there a popularly elected legislature in the province, and is the provincial executive created by and entirely subordinate to it? To the extent to which these questions can be answered in the affirmative, the autonomy can be said to be real. The position of the Council of Ministers has to be examined in the light of the final goal of responsible democracy.

MINISTERS TO BE APPOINTED BY THE GOVERNOR Under the Act of 1935, the Ministers have to be chosen and summoned by the Governor in his discretion and they are to hold office during his pleasure. They must of course be members of the provincial legislature, and if any one of them is not so at the time of his selection, he must find a seat for himself within six months of his appointment as Minister. It may be inferred from the

Instrument of Instructions that the constitutional practice which is associated with Cabinet formation in responsible governments is to be adopted in India. The Governor has to send for the leader of the largest party in the legislature and entrust him with the task of forming a Ministry. The leader may accept the invitation and suggest names of his political comrades for the different portfolios. The Governor accepts the list and the Ministry is then installed in office.

INVITATION TO THE LEADER OF THE MAJORITY PARTY
If such a practice is scrupulously and rigidly followed, the selection of Ministers, though legally vested in the Governor, will, in effect, be made by the people. That in fact is the essence of parliamentary government and the genuinely democratic principle that it embodies. There are different political parties in the country, each having its own organization and a recognized leader as its head. Each party has its own policy and programme which is submitted for the verdict of the final masters—the electors. That party which is successful in capturing the largest number of seats in a general election can be said to be the favourite of the country. It may be taken to have received a mandate from the people to carry out its policy and programme. Even the Governor has to submit to the decision of the nation and call upon the authorized leader of the largest political group to shoulder the burden of the administration.

A DIFFICULTY ABOUT THE INCLUSION OF MINORITIES
However, one serious difficulty may arise in the proper operation of such a salutary system. The Governor is enjoined to see that, so far as is practicable, members of important minority communities are included in the Ministry. Now it may happen that the largest party in the legislature has no member who belongs to the minority communities. Or even if there are such members in its ranks, the leader of the party may not think it feasible to elevate them to the Cabinet on account of their inexperience or for some other reason. Would the Governor, under these conditions, endeavour to impose some other man upon the party which is entitled to be

in power on account of its numerical strength? Can he insist on saying that a place must be found for a stranger in the party counsels? Would the formation of a Ministry be impeded as a result of such a conflict?

DEADLOCK UNLIKELY. The answer will depend on the nature of a particular situation. If a party has an overwhelming or an absolute majority in the legislature and if its discipline is perfect, the Governor dare not carry his insistence to extremes, because thereby he will invite trouble. With a militant majority in constitutional opposition the normal work of government would come to a standstill. Nor could emergency powers be invoked to resolve such a minor impasse. To do so would outrage all sense of proportion. The language of the Instruction itself is guarded. It contains the important saving clause 'so far as is practicable'. No sensible Governor would precipitate a crisis in the face of such a clear declaration, though the word 'practicable' may be twisted somewhat to yield a required meaning.

GOVERNOR'S PERSONAL INFLUENCE IN THE FORMATION OF COALITIONS. Where even the largest political party does not command an absolute majority in the legislature, the Ministry will be in the nature of a coalition of different groups. In such a weak state of organized politics within the province, the Governor can certainly exercise a good deal of personal influence. There is no fear of a solid bloc effectively obstructing his will by going into opposition, because even the biggest bloc does not make a majority. By the exercise of skill in his negotiations and conversations, the Governor could in these circumstances succeed in getting the Ministry he wanted.

CONVENTION ACTUALLY FOLLOWED BY THE GOVERNORS. The experience of the working of provincial autonomy during the last few years shows that the method of appointing Ministers described in the foregoing paragraphs has been almost invariably followed. After elections to the new legislatures were held in the early months of 1937 and the results of those elections were known, the Governor of every province, with the soli-

tary exception of the North-West Frontier Province, summoned the leader of that party which had secured a majority, or the largest number, of seats in the legislature of the province, and asked him to form a Ministry. It was only when the invitation was declined by the Congress leaders that interim Ministries were allowed to be formed, as a stop-gap arrangement, by members of the minority parties in the six provinces in which the Congress party had a clear majority.

REPRESENTATION OF MUSLIMS IN THE MINISTRY Four months later, when the Congress decided to accept office, the leader, of that party in the provincial legislature was entrusted with the task of forming the Government and of choosing his own colleagues for that purpose. The names submitted by the leader, who naturally became the Prime Minister, are known to have been always accepted by the Governor. The question of giving representation in the Ministry to the Muslim minority proved to be rather difficult. The Congress decided as a matter of policy that only such Muslims could be included in its Ministry as were prepared to become members of the Congress and to abide by its discipline and mandates. The Muslim League, which held the majority of Mussulman seats in the provincial legislatures, refused to agree to this condition, and its members were therefore excluded from the Cabinets. The Congress party selected some of its own Muslim members to hold office as Ministers.

THE ATTITUDE OF THE GOVERNORS The Muslim League has since been contending that such Muslim Ministers are not really the representatives of the Muslim community, because they have not the support of the majority of the Muslim members of the legislature. On the other hand, the Congress party, in the interest of the solidarity of its organization, is not willing to allow those who are not in its ranks to occupy the responsible post of Minister as long as the direction of government is in its hands. Appeals were made to the Governors concerned against this attitude, but they have not interfered with the arrangements proposed by

the party which commands the confidence of the majority of the legislature as a whole. No instance has yet occurred of a Governor endeavouring to inflict upon a party a Minister whom it was not prepared to accept.

2. Qualifications, Tenure and Salary

A MINISTER MUST BE A MEMBER OF THE LEGISLATURE. The qualifications of a Minister are not prescribed in the Act, nor could they be so prescribed, except for the requirement that he must be a member of the provincial legislature. It is not laid down that he must be an elected and not a nominated member or that he must belong to the lower and not to the upper chamber. A nominated member of the latter body can therefore be included in the Council of Ministers.

HE IS USUALLY A LEADING MEMBER OF A POLITICAL PARTY. It is obvious that a Ministry will be composed of prominent and leading members of a political party. Individually, almost every one of them must enjoy at least that degree of popularity in the country which enables him to get elected to the legislature from one constituency or another. In the party organization, he must stand in the front rank. That implies that he must be known to be endowed with the gifts of intelligence, industry and character which mark him out for responsibility and distinction.

THE QUALITIES HE IS EXPECTED TO POSSESS. Indeed, the test is not passed merely by a brilliant university career, though it may count as a valuable asset. Several Ministers of England, for instance, possess an excellent academic record and are known for their scholarship and learning, though there are also others who have never secured a university degree. An innate aptitude and love for public life and keen political ambition are the qualities essential in a Minister. He need not have the specialized training of an administrator or a bureaucrat, but he must be gifted with robust common sense, quick and sympathetic understanding and a capacity to appeal to the imagination of the people and carry them

with him. He should be a man of ideas and possess the qualities of a thinker.

NO FIXED TENURE OF OFFICE Technically speaking, a Minister holds office during the pleasure of the Governor and may be dismissed at his discretion. This is however a purely theoretical position. In the parliamentary system, a Minister is really the servant of the legislature and the electorate, and cannot be arbitrarily removed from office by the head of the Government. Nor can he have a fixed tenure of office defined in law. He continues to be in power as long as his party has the complete confidence of the legislature. The maximum number of years for which a Ministry can hold office at a stretch is equal to the maximum period of the life of a legislature. In the Indian provinces the lower chamber or the Legislative Assembly has a life of five years, unless it is dissolved earlier by the Governor. It can be said that normally a Minister will be in his post for a period of five years; if the Ministry is thrown out earlier by a vote of no-confidence, it will be less; if the party is once again returned to power after a general election it will be more.

THE PRIME MINISTER AND THE POWER OF DISMISSAL. It is clear that the power of dismissing, like the power of appointing, a Minister, which legally vests in the Governor, must in practice be exercisable by the Prime Minister. On an exceptional occasion, one or more members of even a homogeneous Cabinet may find themselves in serious disagreement with a majority of their colleagues, and under the circumstances they would naturally be expected to withdraw from the Government. But where parliamentary traditions and spirit have not been properly assimilated, such dissenting Ministers may obstinately refuse to resign and thus create a very embarrassing situation for the Ministry as a whole. The impasse would have ultimately to be ended by the Governor exercising, on the advice of the Prime Minister, his power of dismissing a Minister and removing the person or persons concerned from their posts.

INSTANCES IN BENGAL AND C. P. It is interesting to note

that the Governor of Bengal did not exercise his power of dismissal for removing one of the members of the Cabinet, Mr Naushir Ali, who had differences with the Cabinet and when asked to resign was not prepared to do so. The Premier thereupon tendered the resignation of the whole Cabinet, which was accepted by the Governor, and the same leader formed a new Ministry of all his old colleagues with the exception of Mr Naushir Ali. On the other hand, the Governor of the Central Provinces and Berar took the step of dismissing three of his Ministers on the advice of the Prime Minister in July 1938, but as the former had the support of the legislature they had to be immediately reinstated and the Prime Minister had to resign and retire.

NUMBER OF MINISTERS. The maximum number of Federal Ministers has been prescribed by the Act (it is 10), but no such limit has been prescribed for Ministers in the provinces. The actual number is determined by the convenience of every province and by the exigencies of party alignments in its politics. Generally, the bigger provinces may be expected to have a larger Cabinet than the smaller ones. But this is not always so. The Congress Ministry of Assam, which is one of the smallest and poorest provinces, was composed of eight members while the Bombay Ministry had only seven. The Central Provinces had five Ministers while United Provinces had six. There were three Ministers in Orissa, four each in Bihar and the North-West Frontier Province. In the non-Congress provinces, the Punjab had six Ministers, Bengal had eleven, and Sind had four. In most of the provinces the number of Ministers has not remained fixed at the original figure.

DISTRIBUTION OF WORK AMONG THEM. All the work of the provincial Government is divided into different sections according to the convenience of the Ministry and the number of its members, and each section, called the portfolio, is assigned to a Minister. A portfolio is made up of many departments of government, and takes its name from the most important of them. The seven

Congress Ministers in Bombay had, for instance, the following seven portfolios: (i) Political and Services, Education and Labour,¹ (ii) Finance, Rural Development and Agriculture; (iii) Home and Law; (iv) Health and Excise; (v) Revenue, (vi) Public Works, (vii) Local Self-Government. Each one of these portfolios also contained several other departments in charge of the same Minister.

SALARIES ANNUALLY VOTED UNDER THE MONTFORD REFORMS In regard to the salaries of Ministers, an important departure has been introduced by the Act of 1935. The Montford Reforms had made them entirely votable. Members of the legislature were called upon to sanction the amount in respect of every Minister while passing the annual budget. They had the right and the opportunity to reduce or even to reject the whole demand. This was a direct check on the policy and actions of Ministers, and one of the most effective ways of indicating the legislature's disapproval of ministerial conduct. Such motions, if they were passed, were equivalent to votes of censure and resulted in the dismissal of the Ministers.

SALARIES NOW FIXED BY AN ACT OF THE LEGISLATURE. Now the system has changed. It is laid down that the salary of Ministers will be fixed by an Act of the provincial legislature, and the Act can be amended whenever any changes are felt to be necessary by the people's representatives. Thus the remuneration of the highest servants of the state is left to be determined by the chamber which symbolizes democracy. In the provinces in which the Congress party was in power, and also in Sind, the salary of a Minister was fixed by the provincial legislatures at Rs 500 per month. In Bengal and the Punjab it is Rs 2,000.

BUT NOT ANNUALLY VOTED FOR EVERY MINISTER. However, the salary of particular individuals who hold the office of Minister is not annually submitted to the legislature for its sanction, and it cannot be varied during their term of office. In fact, it is placed in the list of

¹ This portfolio was taken by the Prime Minister.

items which are charged on the revenues of the province and which are therefore non-votable. The legislature can no longer discuss in the budget session the general working of ministerial departments by proposing a nominal cut in the salaries of Ministers. Nor can it drive them out of office by reducing their salaries to a ridiculously low figure. Hereafter, the only method of direct attack on the Ministers will be to propose a motion of no-confidence in them. When that order to quit is passed, no Minister can continue to hold office, at least in normal circumstances.

THE PARLIAMENTARY SECRETARY. The Parliamentary Secretary is a type of official peculiar to the system of responsible government. He is essentially a politician and comes into office with his party and goes out with it. He is expected to possess the same qualities that are supposed to be requisite in a member of the Cabinet. The Parliamentary Secretary has to play the role of an assistant to a Minister and to help him in his administrative, legislative and political duties. It must be emphasized that he is not a member of the public service of the province and can in no sense be described as a bureaucratic official. He must not be confounded with the Secretary to Government, who belongs to the permanent bureaucracy.

ADVANTAGES OF THE OFFICE. The creation of the post of Parliamentary Secretary is advantageous in two ways. Firstly, it relieves the heavy strain on Cabinet Ministers by giving them a second-in-command on whom they can safely rely, both on account of his efficiency and party loyalty. Secondly, it serves as an excellent training-ground for developing ministerial ability and talent, and provides a good reserve from which future Ministers can be drawn. The history of the British Cabinet bears ample testimony to these advantages.

THEIR APPOINTMENT IN INDIA With the advent of popular democracy in Indian provinces the emergence of the Parliamentary Secretary in the provincial polity was quite natural. The Montford Reforms had permitted the appointment of Council Secretaries, but no

Governor thought it necessary to avail himself of the permission. The Act of 1935 contains no specific section on this subject, and therefore if there is no positive provision for the appointment of such officers, there is no bar to their appointment if the provincial legislature so desires.

THEIR SALARY AND NUMBER Parliamentary Secretaries have in fact been appointed in almost all the provinces and provision has been made for the payment of salaries and allowances to them. They are not considered to be Government servants holding places of profit under the Crown, and are not disqualified from continuing as members of the legislature in accordance with section 69 of the Act. The salary fixed for a Parliamentary Secretary in the Congress provinces was Rs. 250 per month. Their number has varied from province to province, but the tradition has not yet been established of every Minister being given a parliamentary assistant of this kind. The number of the Secretaries has generally been smaller than that of the Ministers in a province.

3. Collective Responsibility of the Cabinet

THE CABINET IS ONE INDIVISIBLE WHOLE. One of the fundamental concepts of the Cabinet form of government is the collective responsibility of Ministers. Their number will certainly be more than one—in a country like England it is over twenty. But they all work as a united team, as one corporate and indivisible unit. All of them come into office and go out of office together. All hold themselves responsible for the mistakes or shortcomings of any one of the group, and each one of the group is prepared to sacrifice himself in the interests of all. To the head of the state and also to the public, they present a homogeneous entity, inspired by a common ideology and adhering to a common programme.

ITS MEMBERS BELONG TO THE SAME PARTY The formation of such a coherent council implies that its members are connected with each other by similarity of outlook. They must possess the same sympathies. Their loyalty to principles and persons must be common to a great

extent They must feel attracted to each other by kindred ways of thought and feelings In fact, the Cabinet consists of persons who are members of the predominant political party in the legislature, owing allegiance to the same leader and pledged to carry out the same programme All these conditions will have to be automatically reproduced in India with the introduction of responsible government

THE GOVERNOR INSTRUCTED TO ENCOURAGE JOINT RESPONSIBILITY It was one of the greatest defects of the Montford Reforms that they did not introduce the practice of collective responsibility. Governors of some of the provinces even discouraged its adoption Political opinion in India has always insisted that the practice should form an integral part of any constitutional reform introduced in India The Joint Parliamentary Committee was not very favourable to the proposal, but a clause was ultimately inserted in the Instrument of Instructions to the Governor directing him to foster the growth of joint responsibility among his Ministers.

ITS SUCCESSFUL WORKING IN THE PROVINCES The principle has been in operation in all the provinces where the constitution has not been suspended and has worked, on the whole, with success The Ministers have stood before their parties, the public and the Governors as indivisible units, and full responsibility has been taken by the whole body for all the actions of its individual members In 1939, when the action of the Education Minister in the United Provinces in making a particular appointment as Principal of the Roorkee College was severely criticized by members of his own, that is the Congress, party the whole Cabinet supported him and were prepared to resign as a body Thereupon the party made it clear that they had not lost confidence in the Ministry and the affair was amicably closed.

MEANING OF THE PORTFOLIO SYSTEM The Cabinet conducts its business by what is known as the portfolio system The work of administration can be naturally divided into two categories First, there are matters

of routine and minor details which may require the attention of the head of the department but which are too insignificant to be brought before the whole Council of Ministers. They are disposed of by a Minister in his individual discretion and judgement, though the responsibility even for them is shared by all his colleagues. Then, secondly, there are important questions of principle and policy affecting a particular department. The Minister may formulate his own scheme of reform and propose certain innovations. But he cannot take any action without consulting his colleagues. All important issues have to be submitted to and thrashed out by the whole Cabinet. There is a free exchange of ideas among its members. Criticisms are made and modifications suggested, and ultimately the scheme emerges in a form which is acceptable to all. Then it becomes the combined obligation of the whole unit, which is bound to stand or fall by it.

DIFFERENCES BETWEEN COLLEAGUES What matters are to be considered as minor and what as major is left to the common sense of a Minister. There can be no hard and fast rule to bind him in this respect. Sometimes differences of opinion may arise about his interpretations, but they can be easily removed. Even on questions of principle, as the Cabinet is constituted by persons who are politically alike, a serious cleavage of opinion between them is not very probable. There may be differences in the degree of emphasis, but they can be easily reconciled. However, on an exceptional occasion it may happen that a Minister cannot agree with the viewpoint of his colleagues or his colleagues find it impossible to tolerate his notions and behaviour. He then has to resign his office and leave a Government with which he cannot work in harmony. If need be, he can be asked to leave the Ministry.

4 Importance of the Office of Prime Minister

THE NEED FOR A PRESIDENT Whenever a body consisting of more than one person is required to function, the need for someone to be its leader or president is

self-evident There must be someone to take the initiative in arranging business, to give rulings on occasions of disputes, to co-ordinate Government activities, and to supply that unifying influence which preserves the administrative system from contradictions and chaos. The absence of such a leader would be a great handicap to the smooth working of the machinery of the state.

SELF-ABNEGATION OF THE MONARCH. With the growth of the idea of parliamentary government in England, the King's initiative and authority were naturally doomed. The monarch had to accept a self-denying ordinance and withdraw from active politics and administration in order to make room for the representatives of Parliament. This did not mean the weakening or the degeneration of the executive, but a fundamental change in its structure. The King's Ministers became in reality Parliament's Ministers, appointed, controlled and dismissed by that body. The King's place as their *de facto* master had to be appropriately filled by someone who was pre-eminent in parliamentary life and leadership.

INEVITABLE RISE OF THE PRIME MINISTER The development of responsible institutions therefore has invariably been accompanied by the rise to prominence of a new dignitary called the Prime Minister, or more briefly the Premier. In England, the inevitability of his emergence was not realized at the beginning. Members of Parliament keenly resented what was wrongly believed to be an unauthorized usurpation of power by a single individual. But the logic of circumstances was overwhelming. No Government can operate and thrive without an active chief. The Prime Minister came to symbolize and personify the transaction from monarchy to democracy, even when the institution of kingship was retained in its nominal majesty.

PRIME MINISTERS IN THE INDIAN PROVINCES The inauguration of self-government in the Indian provinces and the formation of responsible Ministries in them must necessarily lead to the same development. Clause VII of the Instrument of Instructions to the Governor recognizes the existence of the leader of the largest

political party in the legislature. It is advised that he should be invited to form the Cabinet. Emphasis is also laid on the need of fostering a sense of joint responsibility among the Ministers and on their being able collectively to command the confidence of the legislature. Governors of provinces have in fact followed the method of sending for the leaders of the largest political party in the newly elected legislatures and requesting them to form a Ministry. Such persons are being designated as the Prime Ministers of the provinces.

NO ANALOGY BETWEEN CONDITIONS IN ENGLAND AND INDIA However, there is a very vital difference between the conditions in England and in India. The British Sovereign has no place in the British Cabinet. He is precluded from attending its meetings or from attempting to influence or interfere with its working in any manner. His will cannot be imposed on any aspect of the administration. The Prime Minister of the country presides over the Cabinet, keeps himself acquainted with important transactions in every department, helps Ministers to arrive at decisions, and generally organizes and conducts the whole of the executive business. He serves as the connecting link between his colleagues and the Crown. All powers that are technically enjoyed by the latter are actually exercised by the Prime Minister, who stands as the embodiment of the main current of popular opinion, for the time being.

THE MEANING OF CONSTITUTIONAL MONARCHY In strict legal theory, the King of England appears to be the mighty centre of all governmental authority. However, these appearances are entirely deceptive. In reality, the King cannot act in any matter or in any manner except in accordance with advice tendered to him by Ministers who are elected to Parliament and to power by the votes of the people. It is a famous maxim of the English constitution that the King can do no wrong, because he cannot do anything of his own accord at all. This obliteration of the King's personality from the domain of active government is the essential feature

of what is known as constitutional monarchy. The strength and popularity of that institution in British polity is due, among other things, to the fact that it has been democratized and modernized.

INDIAN GOVERNORS ARE ACTIVE RULERS. As has been explained in the last section, Governors of Indian provinces are not intended to be mere constitutional or nominal heads. They have been entrusted with large powers, to be exercised in their discretion or in their individual judgement, and of which they cannot divest themselves. And even in matters that are left to be disposed of by the Council of Ministers, the Governor may be able to exercise a considerable influence. He is not only not excluded from the Council but presides over its meetings and conducts its business. The Act has specifically provided that Ministers shall keep him informed of practically all important matters in their respective departments. The subordinates of Ministers, namely the secretaries, who are heads of the secretariat staff, are required to bring to the notice not only of the Ministers but also of the Governor all those cases which in their opinion may affect subjects left to the discretion or to the individual judgement of the Governors. The bureaucratic subordinates of popular Ministers have thus a direct statutory access to the head of the province, and an opportunity to influence his decisions. It is a mischievous constitutional anomaly which may breed very unhappy results.

INFORMAL MEETINGS OF THE CABINET. Consequent on the presence of Governors at Cabinet meetings, an interesting practice seems to have developed in all the provinces in regard to ministerial working. The Governor is not an active Indian politician and public leader and, in the nature of things, his approach to public opinion in the province cannot be other than official, alien, and distant. On the other hand, the Prime Minister and his colleagues are representatives of the party in power and political comrades in constant association. They are pledged to carry out a definite programme of social and political reform. Quite natural-

ly they would hold their own regular meetings for the discussion of every important question which arose in the conduct of government.

DECISIONS TAKEN BY THEM. Such meetings will be informal in the sense that the Governor is not present at them. But they will also be free for that very reason because of the absence of an outsider at the time of discussion. It is in these meetings that the decisions of Ministers may be finally taken after a full and frank exchange of views, sentiments and differences. Subsequently, in the formal meeting over which the Governor presides, they can be presented as the decisions of a united Ministry, and in a very large majority of cases will be affirmed without difficulty, probably after the Governor has expressed his own opinions.

A HEALTHY CONVENTION It is believed that informal Cabinet meetings of this type are being held in practice in every province and are sometimes even officially recognized. They may soon come to acquire by convention a status and legal effect which is not given to them by law. This would be, of course, a very healthy constitutional growth.

THE NECESSITY OF GIVING THE PRIME MINISTER A FREE HAND Of the two partners in the Provincial Government, the Governor is superior in law, and the Prime Minister is superior in popular support and prestige. If autonomy and democracy in the provinces are to be real, the people's representative must be allowed by the Governor to have an entirely free hand in the work of governance. It was declared, in response to the demands of Congress leaders, just before the inauguration of provincial autonomy in April 1937, that no such assurance of freedom can legally and constitutionally be given by the Governor. Then the only alternative left for him is voluntarily to accept the healthy convention of refraining from exercising his ordinary or extraordinary powers in face of the opposition of his Ministers.

LIMITS TO THE VOLUNTARY ACTION OF THE GOVERNORS It would be undue optimism to imagine that such an

exceptional spirit of self-surrender will be invariably displayed by the Governors. It is very difficult to part with power, particularly when its exercise is intended to preserve and to protect the interests of one's own countrymen. And even if some Governors on some occasions are prepared to keep their authority dormant and unexercised, they may not be permitted to do so by the Governor-General and the Secretary of State who are their constitutional superiors in several respects. However, the trend of affairs since 1937 has been encouraging. During the first two or three years of the working of provincial autonomy the Governors were, on the whole, known to have accommodated themselves to the wishes of their Ministers and allowed them considerable freedom in carrying out their policies. This fact was publicly acknowledged even by the Congress Ministries which have gone out of office.

5. The Position of the Services

CONTROL OF THE SECRETARY OF STATE The position of the Services in the scheme of provincial autonomy and also in the federal structure is interesting. The Act has laid down that appointments to the Indian Civil Service and the Indian Police Service are to be made by the Secretary of State, and he can also make any other appointment whenever he thinks it necessary to do so. The rules and regulations about the recruitment of all such persons, about their salary, pensions, leave, dismissal, etc., are to be made by the same authority with the concurrence of the majority of his Advisers. It is one of the Special Responsibilities of the Governor and the Governor-General to safeguard all the rights and privileges of the Services, including their postings and promotions. The Ministers under whom these officers have to serve have not complete control over their subordinates and cannot punish them as they may desire for any infringement of orders.

INDIFFERENCE OF DISOBEDIENCE OF THE SERVICES. There thus arises a perplexing and unfortunate situation. The head of the department may settle a policy and

issue orders, the agency which has to carry them out may be lukewarm or even hostile to the proposals made by the head. Higher officials in the bureaucracy would be naturally conscious of the fact that their superiors, the Ministers, cannot affect their interests adversely or do them any harm. They may therefore be tempted, directly or indirectly, to sabotage a reform of which they disapprove, by hindering its proper execution.

EXPERIENCE OF THE LAST THREE YEARS Such laxity or indiscipline on the part of subordinates is not directly punishable by the Minister. He must bring it to the notice of the Governor and try to get the guilty person properly reprimanded. It is obvious that the harnessing together of Ministers who cannot control their servants and servants who look upon their position with a feeling of distrust, uncertainty, and lack of enthusiasm, is bound to prove embarrassing to both parties. Fortunately, during the last few years of the working of provincial autonomy, the relations between the Ministers and the Services are reported, on the whole, to have been satisfactory. It does not appear to have been found necessary in any province to invoke the Governor's Special Responsibility in respect of the Services on account of a major difference of opinion between him and his Ministers.

XXVI

THE PROVINCIAL LEGISLATURE

1. Introduction of the Bicameral System

INTRODUCTORY. The origin of the legislative powers of the provinces goes back to the year 1807, when the Governors-in-Council of Madras and Bombay were given the power of making regulations for their respective areas. That power was taken away in 1833, and for a period of nearly thirty years all legislative authority for the whole of India was exclusively possessed by the Governor-General-in-Council. In 1861, the law-making power was restored to the provinces. Steady increases in the size, in the elected and non-official elements, and in the powers of the provincial Legislative Councils were effected by the Acts of 1892, 1909 and 1919. The position of the provincial legislatures after the Montford Reforms has been explained in an earlier chapter.¹ The changes introduced by the Act of 1935 and the shape given by them to the provincial legislature have now to be studied in detail. They have been elaborated in Chapter 3, sections 60-87, of the Act.

TWO CHAMBERS FOR CERTAIN PROVINCES. The most important of these changes must be noticed at the outset. For the first time in Indian constitutional history, the bicameral principle has been introduced in the provincial sphere. It has been provided in section 60 of the Act that there will be two chambers in Bombay, Madras, Bengal, the United Provinces, Bihar and Assam, and one in each of the remaining provinces. The upper chamber is called the Legislative Council and the lower chamber is called the Legislative Assembly.

HARMFUL EFFECTS. The harmful consequences of this innovation cannot be overlooked. Even in a big unitary state, the utility of the bicameral system is questionable. Some eminent thinkers have gone to the length of say-

¹ See pp. 212-13

ing that it is not indispensable even in a federation. Its introduction in the smaller and simpler government of a province has no justification, and is indeed positively harmful because to a large extent it counterbalances the constitutional advance that is implied in the popularization of the lower chamber.

UNDEMOCRATIC UPPER CHAMBER The structure of the Legislative Councils, wherever they have been created, follows the usual lines of an oligarchical concentration. The number of their members is small. The franchise for their election is extremely high and the constituencies which elect them are very narrow. They inevitably become the focus of all kinds of vested interests in the country. A House which is comprised mostly of big landlords, millionaires, merchant princes and impecunious fragments of a dilapidated aristocracy becomes an organized stronghold of conservatism and reaction.

Such a second chamber not only duplicates the legislative process but complicates administration. If its powers are real and effective, it nullifies democracy; if its objective is simply to postpone and to delay, it is too expensive and pedantic a mechanism to be maintained in a Provincial Government. Its only function is to hinder the movement of others by acting as a brake on their speed. In the environment of a conquered country, an oligarchical House also automatically tends to become not only indifferent but even hostile to the country's political freedom.

2. Tenure of Membership

THE UPPER CHAMBER IS PERMANENT Following the model of the federal upper chamber, namely the Council of State, the provincial Legislative Council is also made a permanent body, never liable to a wholesale dissolution. One-third of its members have to retire every three years and an individual member has a tenure of as many as nine years. This is of course an abnormally long period for any elective chamber. It is an essential feature of a democratic institution that the closest

affinity should exist between the representative and his constituency.

UNDESIRABLE RESULTS. The currents of popular opinion are liable to frequent and profound change. Elections therefore should be held at short intervals in order to avoid a grievous divorce between the sentiments of the people and those of their chosen representatives. A member who, after election or nomination, is assured of his parliamentary seat for the span of nearly a decade, has no incentive to keep himself up-to-date in his knowledge of the ever-changing view-points of the public or to interpret them loyally. As the whole of the Legislative Council cannot be simultaneously dissolved at any time, it will always contain a substantial element which may be out of tune with contemporary thought and life and will be liable to run counter to the will of the people.

ASSEMBLY HAS A TENURE OF FIVE YEARS. The tenure of the Legislative Assembly is five years. This may be considered to be a fairly reasonable period, neither too long for real democratic working nor too short for continuity and efficiency. An Assembly can be dissolved by the Governor earlier than the period of five years if circumstances demand that an important issue should be decided by the electorate. The ministerial executive may sometimes come into conflict with the legislature and may yet feel that the people are on its side. By dissolving the Assembly and holding fresh elections, the dispute is naturally submitted to the arbitrament of the people who are the final masters and judges.

3. Constitution of the Chambers

INCREASE IN NUMBERS The numerical strength of the legislative chambers in different provinces is prescribed by the Fifth Schedule of the Act and is given in the accompanying tables. It will be seen that the numbers of the Assembly show a considerable improvement over the limits prescribed by the Montford Reforms. In the old Bombay Legislative Council, for instance, there were only 67 elected members from the Presi-

PROVINCIAL LEGISLATIVE COUNCILS
Table of Seats

Province	Total of seats	General seats	Mohammedan seats	European seats	Indian Christian seats	Seats to be filled by the Legislative Assembly	Seats to be filled by the Governor
Madras	Not less than 54 Not more than 56	35	7	1	3	.	Not less than 8 Not more than 10
Bombay	Not less than 29 Not more than 30	20	5	1	.	.	Not less than 3 Not more than 4
Bengal	Not less than 63 Not more than 65	10	17	3	.	27	Not less than 6 Not more than 8
United Provinces	Not less than 58 Not more than 60	34	17	1	..	..	Not less than 6 Not more than 8
Bihar	Not less than 29 Not more than 30	9	4	1	.	12	Not less than 3 Not more than 4
Assam	Not less than 21 Not more than 22	10	6	2	..	.	Not less than 3 Not more than 4

PROVINCIAL LEGISLATIVE ASSEMBLIES
Table of Seats

Province	Total seats	Total general seats	General seats reserved for scheduled castes	Seats for backward areas and tribes	Sikh seats	Mohammedan seats	Anglo-Indian seats	European seats	Indian Christian seats	Commerce, Industry, Mining, Planting	Landholders' seats	University seats	Labour seats	General	Seats for Women			
Madras	215	146	30	1	.	28	2	3	8	6	6	1	6	6	Sikh	Mohammedan	Anglo-Indian	Indian Christian
Bombay	175	114	15	1	.	29	2	3	3	7	5	1	7	5	.	1	.	1
Bengal	250	78	30	.	.	117	3	11	2	19	2	1	8	2	1	2	.	.
United Provinces	228	140	20	.	31	64	1	2	2	3	5	1	3	4	1	3	.	.
Punjab	175	42	8	7	..	84	1	1	2	1	6	1	3	1	.	2	.	.
Bihar	152	86	15	.	.	39	1	2	1	4	4	1	3	3	.	1	.	.
Central Provinces and Berar	112	84	20	1	.	14	1	1	1	2	3	1	2	3	.	.	.	.
Assam	108	47	7	9	.	34	.	.	.	11	.	1	4	1	.	.	.	.
North-West Frontier Province	50	9	..	5	3	36	.	.	1	1	2	.	1	2	.	1	.	.
Orissa	60	44	6	.	.	4	.	.	.	1	2	.	1	1	.	.	.	.
Sind	60	18	..	.	.	33	.	2	..	2	2	.	1	1	.	1	.	.

dency proper, bairing the Sind bloc Now that number is 175 This increase in numbers is most welcome. It reduces the size of the constituencies and enables smaller units of population to have seats assigned to them A living contact can be established between the voter and his representative if the size of the electorate is manageable

ABOLITION OF NOMINATED AND OFFICIAL MEMBERS. Another reform introduced by the new Act is the elimination of the nominated and official elements from the legislature They were a great handicap to the popular side Their solid voting on any question was merely the result of bureaucratic regimentation Their numbers created false appearances because their votes were cast under executive command A small remnant of this system is still retained in the upper chambers both in the provinces and in the Federation. To that extent the constitution must be said to be defective.

The duties of the president of a legislature and the importance of that office have already been explained in Chapter X¹ In a democratic constitution the office is elective and the same principle has been adopted for the Indian provinces

THE PRESIDENT AND SPEAKER The president of the Legislative Council is called the President and that of the Legislative Assembly is called the Speaker There are also a Deputy-President and Deputy-Speaker All these officers are elected by the chambers from among their own members, and they must vacate office if they cease to be members of those bodies They can be removed from office by a resolution of the chamber concerned passed by a majority of all its members (that is, not only of those present). At least fourteen days' notice is required of the intention to move a resolution of this kind

THEIR SALARIES The salaries and allowances of these officers are fixed by an Act of the provincial legislature. In Bombay and other Congress provinces they have been fixed at Rs 500 per month for the President and

¹ See pp 106-7

the Speaker and Rs 100 for the Deputy-President and the Deputy-Speaker

PANEL OF CHAIRMEN In the absence of the President and the Speaker, the Deputy-President and the Deputy-Speaker preside over the sessions of their respective chambers. Provision can be made by the rules of procedure for a person to preside when the deputies are also absent from a meeting. It is laid down in the Rules of the Bombay Legislative Assembly and also of the Legislative Council that at the commencement of every session the Speaker or the President, as the case may be, shall nominate from among the members a panel of not more than four Chairmen. Any one of these persons may preside over the chamber concerned in the absence of the Speaker and Deputy-Speaker or the President and Deputy-President when asked to do so by those authorities.

CONTINUOUS SESSIONS NECESSARY The chamber or chambers of the provincial legislature must be summoned to meet once at least in every year, and between two sessions of a chamber there cannot be an intervening period of twelve months. In actual practice in a democratic constitution, the legislature must be almost continuously in session, because all important questions of policy and administration are discussed and decided by it. With the enormous increase in modern days of the sphere of governmental activity, membership of the legislature in the responsible or parliamentary type of democracy has become a whole-time job, requiring constant presence at the metropolis and strenuous attention to public business. After the inauguration of provincial autonomy, the legislative chambers in the provinces are being called upon to hold long sessions, and the initiative in this respect is taken by the Ministry in power.

QUORUM IN THE PROVINCIAL LEGISLATURES Section 66 (3) of the Act prescribes that at least one-sixth of the total number of members of a Legislative Assembly, and at least ten members of a Legislative Council must be present at their respective meetings. If the number

or the President must either adjourn the chamber or suspend the meeting till the necessary number is present

RIGHT OF MINISTERS TO ADDRESS BOTH CHAMBERS Minister can be a member of only one chamber where there is the bicameral system. But he has the right to address a meeting of the other chamber and to take part in its proceedings but not to vote in that chamber of which he is not a member. This is a salutary departure from the English model, and enables the Government policy to be explained and justified by the person who is directly in charge of it. The same privilege is extended to the Advocate-General, who has to explain to the legislature the legal position and implications of the measures proposed by the Government.

4 Constituencies and Franchise

CONSTITUENCIES The province is divided into small territorial areas for the purpose of elections. The district is generally taken as the unit because of the homogeneity it possesses and the facility for organization that it offers. Large cities are formed into groups by themselves. Non-territorial constituencies are formed for commerce and industry, landholders and other special interests. The three types of electorates that exist everywhere in India have already been explained at length¹.

ELECTORAL ROLL AND AGE LIMIT An electoral roll is prepared for every territorial constituency, and no person who is not included in the roll is entitled to vote in that constituency. No person can become a voter unless he is twenty-one years of age. No person can become a member of the provincial Legislative Assembly before he attains the age of twenty-five, or of the Legislative Council before the age of thirty. No person can become a member of both the houses of the provincial legislature. Residence in the constituency for a

¹ See Chapter IX.

certain number of days, usually 180 or 120 ; ~~under~~ necessary condition of the franchise.

The following ~~qualifications~~ Summary of the principal qualifications in the different provinces. It is, of course an exhaustive list but contains the main items.

1. MADRAS

(i) The Legislative Assembly. (a) those who pay the motor vehicle tax or a profession tax or a property tax or house-tax to any municipality or local board, or who are assessed to income-tax; (b) those who are registered landholders, inamdars, ryotwari pattadars, or occupancy tenants, (c) those who are literate. Women possessing these qualifications are allowed to vote. A woman is also allowed to vote if her husband is assessed to pay income-tax or pays an annual house rent in the city of Madras of not less than Rs 60 or pays property or profession tax of not less than Rs 3 per year or holds land of an annual rental value of not less than Rs 10

(ii) The Legislative Council. (a) those who pay income-tax on an income of not less than Rs 7,500 per year, (b) those who hold land of an annual rent value of not less than Rs. 300; (c) those who hold titles not less than Rao Bahadur; (d) those who have been members of any legislature, executive councillors, ministers, members of a university senate, high court judges, presidents of municipalities or district boards, or chairmen of central co-operative banks, etc. Women possessing these qualifications have the right to vote. A woman can also vote if her husband is assessed to income-tax on an annual income of not less than Rs 20,000 or holds land the annual rent value of which is not less than Rs 1,500, etc.

2. BOMBAY

(i) The Legislative Assembly. (a) those who pay income-tax; (b) those who hold land assessed to a land revenue of not less than Rs. 8 per year, (c) those

who pay an annual house rent of not less than Rs 60 in the city of Bombay or Rs 18 in any other place; (d) those who have passed the matriculation or school leaving examination Women possessing these qualifications can vote A woman can also vote if her husband pays income-tax or holds land assessed to an annual revenue of not less than Rs 32 or if she is literate

(11) The Legislative Council (a) those who pay income-tax on an annual income of not less than Rs 15,000, (b) those who hold land assessed to a land revenue of not less than Rs 350 per year, (c) those who are sardars, (d) those who hold titles not less than that of Rao Bahadur, (e) those who have been members of any legislature, executive councillors, ministers, members of a university senate, judges of high courts, presidents of municipalities or district local boards, chairmen of central co-operative banks, etc Women possessing these qualifications have the right to vote A woman is also allowed to vote if her husband is assessed to income-tax on an annual income of not less than Rs 30,000 or if he holds land assessed to an annual land revenue of not less than Rs 2,000 or if he is a sardar, etc

3 BENGAL

(1) The Legislative Assembly (a) those who pay the motor vehicle tax, or income-tax, or a tax or licence fee to the Calcutta Corporation, or municipal tax of not less than As 8 or road and public works cess of not less than As 8 or the chaukidari tax or union rate of not less than As 6, every year, (b) those who have passed the matriculation or an equivalent examination Women possessing these qualifications are given the right to vote A woman is also entitled to vote if her husband owns or occupies, in the city of Calcutta, a house valued for assessment purposes at not less than Rs 150 per annum or, in any other city, if he pays municipal fees or taxes of not less than Re. 1-8 per year, etc

(11) The Legislative Council. (a) those who pay income-tax on an annual income of not less than Rs 5,000, (b) those who hold titles not less than Rao Baha-

dur, (c) those who have been members of any legislature, executive councillors, ministers, members of the senate of a university, high court judges, presidents of municipalities or district boards, chairmen of central co-operative banks, etc, (d) those non-Mohammedans who in Buidwan and Presidency Divisions pay an annual land revenue or rent or both of not less than Rs 2,000, and in the divisions of Dacca, Rajshahi and Chittagong not less than Rs 1,500, (e) those Mohammedans who pay not less than Rs 250 per year as land revenue or rent or both. Women possessing these qualifications have the right to vote. A woman can also vote if, in the case of non-Mohammedans, her husband pays income-tax on an annual income of not less than Rs 12,000, or pays as a proprietor land revenue of not less than Rs 7,500 per year in Burdwan and Presidency Divisions and not less than Rs 5,000 in Dacca, Rajshahi and Chittagong Divisions. In the case of Mohammedans the husband must pay income-tax on income of not less than Rs 6,000 or land revenue of not less than Rs 600 per year.

4 THE UNITED PROVINCES

(1) The Legislative Assembly (a) those who are assessed to income-tax or who pay municipal tax on an income of not less than Rs 150 per year, (b) those who are owners or tenants of a house the rental value of which is not less than Rs 24 per annum, (c) those who own land which is assessed for land revenue of not less than Rs 5 per year or those who as tenants pay rent of not less than Rs 10 per annum, (d) those who have passed the upper primary examination, etc. Women having these qualifications are allowed to vote. A woman also gets the right to vote if her husband is the owner or tenant of a house the rental value of which is not less than Rs 36 per year or who owns land assessed at not less than Rs 25 or pays as a tenant not less than Rs 50 per year as rent or pays income-tax, etc.

(11) The Legislative Council (a) those who pay income-tax on an annual income of not less than Rs 4,000,

hold a title not lower than Rao Bahadur or have been members of any legislature, executive councillors, ministers, members of the senate of a university, high court judges, presidents of municipalities or local boards, chairmen of central co-operative banks, etc., (b) those who pay land revenue of not less than Rs 1,000 per year or those who pay as tenants not less than Rs 1,500 per year. Women possessing these qualifications are given the right to vote. They also get the right if the husband pays income-tax on not less than Rs 10,000 per year or on land revenue of not less than Rs 5,000 per year, etc.

5 THE PUNJAB

The Legislative Assembly (a) those who pay income-tax or a direct municipal tax of not less than Rs 50 per year, (b) those who pay land revenue of not less than Rs 5 per year or who are tenants of not less than six acres of irrigated or twelve acres of unirrigated land; (c) those who own or occupy immovable property of a rental value of not less than Rs 60 per year, (d) those who have attained the primary educational standard. Women having these qualification are allowed to vote. A woman can also vote if her husband pays income-tax or a direct municipal tax of not less than Rs 50 per year or land revenue of not less than Rs 25 per year, etc.

6 BIHAR

(1) The Legislative Assembly. (a) those who pay income-tax, or not less than Re 1-8 as municipal tax, or not less than As 9 as chaukidari tax, (b) those who pay house rent of not less than Rs 24 per year in Jamshedpur or not less than Rs 6 per year in other places, (c) those who have matriculated. Women possessing these qualifications have the right to vote. A woman can also vote if her husband pays income-tax, or not less than Rs 3 as municipal tax, or not less than Rs 2-8 as chaukidari tax, or pays house rent of not less than Rs 144 in Jamshedpur and not less than Rs 24 in other places per year, etc.

(11) The Legislative Council (a) those who pay income-tax on not less than Rs 7,500, (b) those who pay, in a Mohammedan constituency, land revenue of not less than Rs 375 per annum or, in any other constituency, not less than Rs 600 per year, (c) those who hold titles not lower than Rao Bahadur, (d) those who have been members of any legislature, executive councillors, ministers, members of the senate of a university, high court judges, presidents of municipalities or district boards, chairmen of central co-operative banks, etc Women having these qualifications can vote A woman is also given the right to vote if her husband pays income-tax on not less than Rs 20,000 or holds land paying a revenue of not less than Rs 1,200 in the case of Mohammedans and not less than Rs 2,400 in the case of others, etc

7 THE CENTRAL PROVINCES AND BERAR

The Legislative Assembly (a) those who pay income-tax or a municipal tax assessed on a haisiyat of not less than Rs 75, (b) those who pay land revenue of not less than Rs 2 per year, (c) those who own or occupy a house of an annual rental value of not less than Rs 6, (d) those who have passed an examination giving admission to the Nagpur University Women possessing these qualifications have the right to vote A woman is also qualified to vote if her husband pays not less than Rs 35 per year as land revenue or occupies a house of an annual rental value of not less than Rs 36, etc

8 ASSAM

(1) The Legislative Assembly (a) those who pay income-tax or not less than Rs 2 (or in some areas Re 1-8 or Re 1, or As 8) as municipal tax or chaukidari tax per year, (b) those who pay land revenue of not less than Rs 7-8 per year or those who pay Rs 7-8 as rent, (c) those who have passed the middle school leaving examination Women possessing these qualifications have the right to vote A woman can also get the right if her husband pays income-tax, or municipal

taxes varying from Rs 2 to Re 1 per year or if he pays land revenue of not less than Rs 15 per year, etc

(11) The Legislative Council: (a) those who pay income-tax on not less than Rs 3,000 per year or land revenue of not less than Rs 500 per year, (b) those who hold titles not lower than Rao Bahadur, (c) those who have been members of any legislature, executive councillors, ministers, members of the senate of a university, high court judges, presidents of municipalities or local boards, chairmen of central co-operative banks, etc Women who possess these qualifications are given the right to vote A woman is also allowed to vote if her husband pays income-tax on not less than Rs 6,000 or pays land revenue of not less than Rs 1,000 per year, etc

9 THE NORTH-WEST FRONTIER PROVINCE

The Legislative Assembly (a) those who pay income-tax, or not less than Rs 50 as municipal tax, or not less than Rs 2 as district board tax, (b) those who occupy a house of the rental value of not less than Rs 48 per year, (c) those who are owners or tenants of not less than six acres of irrigated and not less than twelve acres of unirrigated land or who pay land revenue of not less than Rs 5 per year, (d) those who have passed the matriculation or, in rural areas, the fourth class primary examination Women who possess these qualifications have the right to vote A woman is also entitled to vote if her husband has an income of at least Rs. 40 a month or if he pays income-tax or if he pays house rent of not less than Rs 48 per annum or pays land revenue of not less than Rs 10 per annum, etc

10 ORISSA

The Legislative Assembly (a) those who pay income-tax, or not less than Re 1-8 as municipal tax, (b) those who have passed the matriculation examination, (c) those who pay chaukidari tax of not less than As 9 or land revenue of not less than Rs 2 per year, there being slight variations in the amounts according to districts Additional qualifications are also prescribed for women

11 SIND

The Legislative Assembly (a) those who pay income-tax, (b) those who own or occupy as permanent tenants land assessable for land revenue at not less than Rs 8 per year, (c) those who cultivate as *haris* land assessed at not less than Rs 16 land revenue per year, (d) those who pay an annual house rent of not less than Rs 30 in Karachi and Rs. 18 elsewhere, (e) those who have passed the matriculation examination Women possessing these qualifications are allowed to vote A woman also gets that right if her husband is assessed to income-tax or pays Rs. 32 as land revenue per year or pays an annual house rent of not less than Rs 60 in Karachi or not less than Rs 36 elsewhere

DISQUALIFICATIONS The following persons are disqualified from being voters: (a) those who hold any office of profit under the Crown in India, except Ministers and such other officers as may be mentioned by an Act of the provincial legislature, (b) those who are of unsound mind, (c) those who are undischarged insolvents, (d) those who are guilty of election offences, (e) those who are convicted and sentenced to imprisonment for not less than two years; in this case the period of disqualification is to be five years or such less number of years as the Governor in his discretion may allow in a particular case

A person can stand for election to more than one legislative chamber but he must sit as a member of only one of them He must make his choice soon after election results are published

PERCENTAGE OF ENFRANCHISED PEOPLE The franchise for the Legislative Assembly in every province is fairly low It is much more restrictive than pure adult suffrage, but the payment of only Re 1-8 as house rent per month or Rs 8 as land revenue per year can in no way be described as a very high demand Even when the requirements are so insignificant, the total enfranchised population throughout British India has been calculated to be in the neighbourhood of thirty-five million, or only

about 14 per cent of the British Indian population. Nothing provides more eloquent evidence of the exceptionally poor standard of life and annual income of the average Indian.

5. Functions and Powers

THREE TYPES The functions and powers of a provincial legislature are similar to those of the legislature of any democratic country. They can be divided as usual into the three groups of legislative, administrative and financial,¹ and treated separately under those heads.

POWER OF LAW-MAKING The legislature is the law-making authority in the province, and all laws required to be passed in respect of subjects assigned to the provinces and enumerated in the Provincial Legislative List have to be enacted by its chamber or chambers. They can also enact laws on subjects enumerated in the Concurrent Legislative List. Certain limitations have been placed on this power, and they have been mentioned in Chapter XXIII, §1.²

FRAMING RULES OF PROCEDURE The legislature has also been empowered by section 84 of the Act to frame rules for regulating the procedure and conduct of its business, and in the exercise of that power legislative chambers in all provinces have framed elaborate rules for the purpose mentioned. They follow more or less the same pattern, and the rules of one chamber bear a very considerable resemblance to those made by another. The Bombay Legislative Assembly Rules are 149 in number and the Bombay Legislative Council Rules are 136.

MOST OF THE BILLS ARE GOVERNMENT BILLS. Legislation is one of the most vital and effective instruments in the conduct of government, and it is only natural that those who are responsible for carrying on the government at any time should have the predominant share in law-making. Most of the Bills that are put before the legislature are therefore initiated by the Ministry. They are the leaders of the party which has a majority

¹ See pp 86-89

² See pp 221-2

of seats in the house and which has been placed in power by the votes of the electorate. They have a mandate to implement their programmes of reconstruction and reform, and must exercise a prior claim on the time and attention of the legislature.

DAYS FOR PRIVATE MEMBERS' BUSINESS Any member of the legislative chamber of a province can give notice of a Bill which he wants to move, and subject to the provisions of the Act of 1935, can seek permission to introduce it. But as in other countries, private Bills given notice of or introduced by non-official members have only a small chance of being taken up for consideration by the chamber or chambers, and are often crowded out, or lapse, for want of time. According to the rules of the Bombay Legislative Assembly, Government may allot specific days for private members' business, the number of days so allotted being not less than two days for every fourteen days on which Government business is transacted.

NATURE OF THE PROCEDURE The procedure in the provincial legislature in respect of the passage of Bills is to a great extent similar to what has been described in Chapter X, §4¹. Provision has been made for the translation of a Bill, after it is published in the *Gazette*, into the recognized languages of a province, and also for its reference, after the first reading, to a Joint Committee of both the chambers where there are two chambers, if it is considered expedient to do so.

ASSENT OF BOTH CHAMBERS NECESSARY FOR BILLS If a province has two chambers, a Bill, other than a Money Bill, can originate in either of them. Money Bills must originate only in the lower house, that is the Legislative Assembly. Every Bill has to pass through three readings in each chamber, and must be passed in identical form and language by both chambers before it can become an Act. Separate provisions have been made for cases of disagreement between the houses. Since the advent of provincial autonomy, many Acts

¹ See pp 111-13

of first-rate importance have been placed upon the statute book by the legislature of every province.

CONTROL OVER ADMINISTRATION The legislature's control over the provincial administration is exercised in the four ways described in Chapter IX, §2¹ It may pass resolutions and thereby give definite expression to its views on a matter of public importance Any of its members can put questions and supplementary questions on administrative affairs, and Ministers are bound to supply all the information required in this way This is a healthy check on the executive machine and a convenient method of exposing any defects or high-handedness that may be noticed in its operation A member can also move a motion of adjournment to discuss a matter of recent occurrence and of public importance This gives the Government an opportunity to explain their position and allows the legislature to express its approval or disapproval of Government's policy Lastly, a direct attack can be launched against the actions and conduct of a Minister or Ministers by moving a motion of no-confidence in him individually or in the whole Ministry Such motions have been tabled against the Ministers in Bengal and Sind, but without success, though the Sind Ministry had ultimately to resign The procedure in respect of each one of these matters has been prescribed by rules made by the legislative chamber or chambers

FINANCIAL POWERS A popular legislature must exercise complete control over the finances of the country in a free democracy The powers of the provincial legislature in this particular domain have increased after the introduction of provincial autonomy The sources of income which are within the competence of that body to vote have been described in Chapter XXIII, §3² The budget of the province for every financial year has to be placed before the chamber or chambers of the legislature. It shows separately the expenditure that is charged upon the revenues of the province and is not votable by the Assembly, and expenditure that is votable

¹ See pp 87-88

² See pp 228-34

by it. However, most of the items in the non-votable list can be thrown open for discussion by the Governor. The votable expenditure is to be submitted to the Legislative Assembly (and not to the upper chamber, that is the Legislative Council if it exists in a province) in the form of demands for grants. The Assembly has power to assent to, to refuse, or to reduce any such demand, but not to increase it. Any reduction made by it in an amount demanded can be restored by the Governor if he thinks that the cut would affect the discharge by him of any of his Special Responsibilities.

VOTABLE AND NON-VOTABLE EXPENDITURE IN BOMBAY
In the final issue of the Civil Budget Estimates of the Bombay province for the year 1939-40, the authenticated schedule of expenditure showed that out of a total expenditure of Rs 14 06 crores, Rs 3 72 crores were charged upon the revenues of the province and Rs 10 34 crores were voted by the Legislative Assembly.

The following statement will give an idea of the budgetary position in Bombay in pre-war days, it does not of course contain all the detailed figures in the budget.

REVENUE FROM, AND EXPENDITURE ON, SOME IMPORTANT HEADS
IN THE PROVINCE OF BOMBAY 1939-40

<i>Revenue</i>		<i>Expenditure</i>	
	Rs		Rs
Taxes on Income	32,20,000	Land Revenue	66,63,000
Land Revenue	3,38,63,000	Provincial Excise	39,37,000
Provincial Excise	1,77,10,000	Forest	27,32,000
Stamps non-Judicial	75,56,000	Other Direct Demands	
Stamps Judicial	68,20,000	on Revenue	39,00,000
Forest	41,54,000	Police	1,71,43,000
Registration	14,45,000	Education	2,09,92,000
Motor Vehicles	43,30,000	Medical	47,79,000
Other Taxes and		Public Health	31,48,000
Duties	2,06,42,000	Agriculture	13,06,000
Civil Administration	1,11,98,000	Co operation	17,63,000
		Industries	13,14,000
		Miscellaneous Depart- ments	10,74,000

6 Privileges, Salary and Leave of Members

FREEDOM OF SPEECH Subject to the provisions of the Act of 1935 and to the rules and standing orders regulating the procedure of the legislature, there is freedom of speech in every provincial legislature. No member is liable to any proceedings in any court in respect of anything said by him or of any vote given by him in the legislative chamber or any of its committees. No action can be taken against him in respect of the publication by or under the authority of the chamber of any report, paper, votes or proceedings. Other privileges of members may be defined by an Act of the provincial legislature. That body cannot however have the status of a court or any punitive or disciplinary powers other than the power to remove or exclude persons who infringe the rules or standing orders or behave in a disorderly manner.

TRAVELLING AND HALTING ALLOWANCES Members of the Legislative Assembly and Council will be entitled to receive such salaries and allowances as may from time to time be determined by an Act of the provincial legislature. This is an important privilege. Members have to travel from their place of residence to the city—this is usually the capital of the province—where the sessions of the legislature are held, and to stay in that city during the continuance of the session. It is obvious that adequate travelling and halting allowances must be paid to them for this purpose.

ONEROUS DUTIES OF THE MEMBERS OF A LEGISLATURE But in the light of modern political ideas and developments even this is not enough. The duties of a legislator in a democratic state are now very extensive and exacting, and all his time and energy have to be devoted to them. They cannot be performed, as before, merely as an interesting hobby or pastime during intervals which may be snatched from a busy professional life. It is admitted that democracy, to be real, ought to enable even a poor man with the necessary popularity and

ability to become a member of the legislature and to fulfil all the obligations of that office

SALARY NECESSARY IN THE INTERESTS OF SOCIAL JUSTICE But this would mean that he must give up the vocation by which he has been earning his livelihood and also, in a majority of cases, his usual place of residence because the legislature is located in the metropolis. Evidently, a man without other means of subsistence cannot afford to lose his trade or employment, to do so will be to bring starvation and ruin to him and to his family. Under such circumstances, the rich man of leisure will be at a great advantage. He can enter the legislature and conduct the government, but it will not be democracy. Many modern constitutions have therefore provided for the payment of a salary to a member of the legislature, so that the opportunity of participating in parliamentary life is not entirely denied to poor but competent persons. Members of the British Parliament get a salary of £600 per year.

SALARY FIXED IN BOMBAY After the introduction of provincial autonomy, the Bombay legislature decided to accept the principle of paying a salary to its members and passed an Act for that purpose in 1937. The amount of the salary has been fixed at Rs 75 per month. Travelling and other allowances have been similarly provided and detailed rules have been prescribed in that connexion. Other provinces have also passed measures on the same lines.

PERMISSION FOR LONG ABSENCE If a member at any time finds that he is unable to attend the meetings of a chamber for a period of sixty consecutive days (no account being taken of the period during which the chamber is prorogued, or is adjourned for more than four consecutive days) he must apply for permission to remain so absent, and the chamber may grant the permission. If a member remains absent without such permission, the chamber may declare the seat of the member vacant and it would have to be filled by a fresh election.

7. Conflict Between the Chambers

OCCASIONS OF DISAGREEMENT. Where there are two legislative chambers with co-ordinate powers, there is a possibility of a serious disagreement between them. A Bill passed by one chamber may not be acceptable to the other. It may propose certain amendments which the originating chamber is not prepared to endorse. The constitution lays down that no Bill can become an Act unless it is passed by both chambers of the legislature. The question then arises as to whether the Bill in dispute should be dropped altogether or whether some method should be found to overcome the deadlock. To allow the 'Noes' to carry the day on all occasions would be hardly fair to the bigger and more popular chamber. A more constructive remedy is therefore required.

JOINT SITTING. Section 74 of the Act of 1935 lays down that if a Bill passed by the Legislative Assembly is not passed by the Legislative Council within twelve months of its receiving the Bill, the Governor may summon the chambers to meet in a Joint Sitting for the purpose of deliberating and voting on the Bill. In such a meeting the vote of the majority of members present will finally decide the issue. No new amendments can be suggested at this stage. The Governor may summon a Joint Sitting even before the period of twelve months is over if he feels that the Bill under discussion relates to finance or affects any of his Special Responsibilities.

The President of the upper chamber will preside over a Joint Sitting. Rules as to procedure are to be made by the Governor in consultation with the President of the Council and the Speaker of the Assembly.

THE RELATION OF THE EXECUTIVE TO THE LEGISLATURE

1. The Legislature's Control over the Ministers

PARLIAMENTARY PRACTICE It is one of the most vital characteristics of parliamentary government that the executive is completely subordinate to the legislature. In England, for instance, the House of Commons is all in all. The British Cabinet, however great may be the men who compose it, is entirely the servant of the British Parliament, brought into office because of the support of its majority, and deposed from power as a result of the expression or indication of its displeasure. The British democracy is reflected in the British Parliament. Through the instrumentality of that legislative body, it exercises its ultimate and unlimited sovereignty.

THE LEGISLATURE'S POWERS IN THE SCHEME OF PROVINCIAL AUTONOMY If India's political progress is to lie along democratic and parliamentary lines, the Indian legislatures must be placed in the same position of unquestioned supremacy, without unduly minimizing the importance and prestige of the executive. The claim has been repeatedly made for the Act of 1935 that it has established full provincial autonomy. It would therefore follow that all political authority in the provinces is now vested in its legislature. How far does such a state of things exist in actual practice? To what extent does the provincial legislature control taxation, expenditure, and the executive actions of Ministers?

APPOINTMENT OF MINISTERS MADE IN EFFECT BY THE LEGISLATURE The Act has laid down that the appointment of Ministers has to be made by the Governor. But it is a necessary condition that they must be members of the provincial legislature. The Governor is further instructed to endeavour to select them in such a manner that they are able collectively to enjoy the

confidence of that popularly elected body. These are significant provisions. Their inevitable result, in normal circumstances, would be that the Ministers are appointed, in effect, by the legislature, which is really the nation in miniature for the time being.

THE VERDICT OF THE ELECTORATE MUST BE RESPECTED
The recognized leaders and prominent members of different political parties contest the elections. They put forward their policies and programmes. The voters who are to make the final choice are naturally persuaded to support that man and that party whose views and general outlook appeal to them. A leader who has the overwhelming backing of the electorate is in an extremely formidable position. No Governor can afford to ignore him or to set him aside. To do so would be to precipitate a political crisis which would be likely to end in the Governor having to yield to the weight of popular opinion.

MINISTERS' SALARIES ARE NON-VOTABLE The salaries of Ministers, though fixed by the legislature, are not annually voted by it in respect of individual Ministers. They are charged on the revenues of the province and are included in the non-votable list. It may be feared that this restriction strengthens the position of the Ministers and correspondingly weakens that of the legislature, because the withholding of salaries has ceased to be a weapon in the hands of the latter. However, it is not likely to make much difference in actual practice.

REFUSAL OF SUPPLIES AND MOTIONS OF NO-CONFIDENCE
A large portion of the expenditure on ministerial departments has been made subject to the sanction of the legislature. That body may refuse to sanction any amount if it disapproves of the conduct of Ministers and desires that they should resign. Such a refusal of supplies is bound to have an immediate effect. In fact the legislature is allowed to adopt even a more direct method of telling Ministers that they are not wanted. It can pass a definite motion of no-confidence in them and thus command that they should leave their office. In face of such a straight attack, no Ministry

can survive. Not even the Governor can hope to save it from dismissal

It is therefore clear that the Ministers' position of subordination to the legislature is accepted in the new constitution. This does not, however, apply to abnormal and extraordinary occasions, as for example, when the majority party in the legislature refuses to form the Ministry and also does not allow others from the minority groups to form one

2. Control over Finance and Legislation

NON-VOTABLE ITEMS IN THE PROVINCIAL BUDGET. The real difficulties of the legislature do not arise on account of its inadequate control over the Ministers, but on account of serious deductions made from its own powers in several ways. All the expenditure of the Provincial Government is not left to be determined and regulated by the legislature's will. The budget is divided into parts, consisting of votable and non-votable items. The latter are deliberately excluded from the authority of the elected representatives of the people, though discussion on them may be permitted. The non-votable expenditure amounts to about 30 per cent of the total expenditure. This means a considerable watering down of the very concept of provincial autonomy.

POWER OF RESTORING CUTS Even in regard to items that are votable, the dictation of the legislature is not final. Its members may make cuts in the amounts demanded by the Ministers. But if the Governor is satisfied that any such cut is likely to affect any of his Special Responsibilities, he can restore it, wholly or partly, in his own discretion. The creation of such an extraordinary veto is incompatible with a genuine transfer of power to the people of the province. Its exercise will naturally prove to be irritating, because it will be tantamount to a deliberate defiance of popular opinion.

POWER OF ENACTING GOVERNOR'S ACTS In matters of legislation also a similar exceptional provision has been made. All laws required for the province have to be placed before the legislature for consideration.

and enactment This is quite in keeping with the democratic principle Laws which concern all and have to be obeyed by all ought, in the fitness of things, to be decided by all However, the constitution has further provided that the Governor, acting alone and in his individual capacity, may enact any law which he thinks it necessary to enact There need not be even the pretence of a consultation between him and the legislature or an attempt on his part to bring them round to his views Such Governor's Acts, passed as they are by the single head of the executive in his own autocratic judgement, would be irrefutable evidence of the limitations on provincial autonomy imposed by the Act of 1935

3. Control over the Services

THE POLITICAL EXECUTIVE Ministers constitute what may be described as the political executive of the state They are expected to be men of versatile talent and of broad vision Their chief duty is to think in terms of ideals and formulate far-seeing policies It has already been explained that in the structure of provincial autonomy, Ministers are made fully responsible to the legislature of the province

THE ADMINISTRATION There is another constituent of the executive which supplements and completes the work of Ministers It is composed of the Civil Service and is known as the administration Its duty is to carry out the plans and projects of parliamentary leaders and give them a concrete shape That is a responsible and difficult task and can only be accomplished by really competent men

CONTROL OF THE LEGISLATURE The position of such a public service in a democratic state is peculiar The public Services are of course entirely under the control of the people, who act through their elected representatives in the legislature The latter body prescribes rules and regulations which determine their salaries, promotion, leave, pensions, etc. Yet a democracy is also a government Its servants have a very important mis-

sion to fulfil They are not required to take their orders from the man in the street, nor are they liable to be chastized and dismissed by him

IMPORTANCE OF THE PUBLIC SERVICES. The 'public Services are established for satisfying some of the primary needs of organized human society. They have an enormous utility *per se* The efficient performance of administrative functions requires great intellectual aptitude and training. Recruitment to the Services is therefore made by an open competitive examination, conducted by persons of the highest attainments and integrity Thereby the poison of nepotism and favouritism is eliminated, and persons of the right calibre are selected Security of tenure during good behaviour is assured to every servant The prospects of his advancement are not decided by political considerations but only on the strength of ability

THEIR POSITION AS EXPERTS AND SERVANTS In short, the bureaucracy represents a trained body of professional experts, whose knowledge and experience are of the highest benefit to the state They are treated with great deference and respect even by their superiors, the Ministers All the same, it must be clearly understood that the experts are not the masters They are merely venerable advisers and servants of the State. Their opinions are sure to be invited and carefully considered before the formulation of policies, but it is the popular Minister who takes the final decision The politician supersedes the administrator The specialist has to adjust himself to the will of the sovereign and place all his technical skill at his service

DOUBLE ROLE OF THE I C S As long as the Indian Government was entirely bureaucratic, officers in the Indian Civil Service had to perform both political and administrative functions They decided policies and also carried them out The Minister and the bureaucrat were combined in the same person The grant of self-government to India introduces a fundamental alteration in this privileged status. In proportion as political power is transferred to the Indian people, the Services

must inevitably recede into the background. The Minister and the legislature will determine the purposes for which the mechanism of the state should be utilized, and the bureaucracy will have to carry out their wishes with efficiency and loyalty.

FREEDOM FROM POLITICAL INFLUENCE That the Services must be kept immune from the capricious influence of mere party politics, that it would be disastrous to allow them to be made the sport of party feuds and manoeuvres, is obvious. Interference by politicians in purely administrative details demoralizes both administration and politics. A democracy which is tempted into corruption is definitely on the road to ruin. The traditions of a high standard of purity, discipline, efficiency, detachment and self-effacement, which are such a noble asset of the British Civil Service, will have to be developed in this country also.

SPECIAL PRIVILEGES CONFERRED BY THE ACT OF 1935 But this does not mean that India's superior Services should be legally kept beyond the authority of the Indian nation. That kind of independence would be thoroughly inconsistent with the reality of India's political freedom. The Act of 1935 contains a whole Part¹ devoted to an enumeration of the special privileges guaranteed to the superior Services. Their appointment is to be made by the Secretary of State even though they have to work under Ministers. Their salaries, promotion, leave, pensions, etc., are also fixed by the Secretary of State and not by the Indian legislatures though India has to bear the financial burden. Certain important posts are reserved to be filled by members of the ICS. No disciplinary action can be taken against these exalted subordinates by their popular superiors, the Ministers. The control of the legislature over this portion of the executive is thus substantially limited. This is a grave drawback to provincial autonomy.

¹ Part X, sections 232-77

THE WORKING OF PROVINCIAL AUTONOMY

1. Criticism of Special Responsibilities

WHAT is the net achievement of the Act of 1935 in the sphere of provincial government? Is the autonomy conferred upon the provinces a substantial gain? To what extent has it brought about the real political advancement of the people? How far has it now become constitutionally possible for Indian leaders to translate into action some of their cherished ideals? Political organization is, after all, only a means. The material happiness of the community and its spiritual exaltation are the ultimate end. The important questions mentioned above will naturally have to be considered in the epilogue of any constitutional study.

AN APPARENT CHANGE FOR THE BETTER There was very severe criticism of the Montford Reforms because in public opinion they were extremely inadequate. The Act of 1935 is supposed to go much further than the older measure, particularly in the provincial sphere. The clumsy structure of dyarchy has been abolished. The whole administrative machinery of the province is now entrusted to Ministers who are responsible to and removable by a popularly elected legislature. In appearance, at least, all these changes indicate a remarkable degree of political advance as compared with conditions in the past.

MANY RESTRICTIONS AND SAFEGUARDS Unfortunately, the impression conveyed by such a broad, simplified outline is not the whole truth and is therefore misleading. It ignores those important provisions of the Act which are intended to operate as a vigorous negative force. In fact, the new constitution represents an ingenious blend of plus and minus, of addition and subtraction, of progress and regress. The hand that

gave has also taken away. To what extent the two forces working in opposite directions actually cancel each other and what exactly is the nature and the size of the final remainder can only be revealed by experience

EXPERIENCE ALONE WILL BE THE TEST The all pervading Special Responsibilities of the Governor and the Governor-General and the numerous reservations and safeguards affecting some of the most vital aspects of the administration lurk constantly behind in the constitutional picture, and may emerge at any moment to overwhelm the normal political routine. The Joint Parliamentary Committee emphasized that the safeguards are not mere paper declarations, dependent for their validity on the good will or timidity of those to whom the real substance of power is transferred. It has been said that the Act of 1935 does not introduce in the provinces a system of limited monarchy but a system of limited ministry. The Governor is not expected to retire into sublimated obscurity like the British monarch. His personality may prove an active force. His will may come to be frequently pitted against the will of the electorate. How such conflicts will end, to what extent the people will be able to have their own way, are questions which can be answered only by time.

DEADLOCK IN CONGRESS PROVINCES However, the experience of three years' working of the new scheme which was inaugurated on 1 April 1937 was quite hopeful. In the first election to the provincial legislatures held in accordance with the provisions of the Act, the Congress Party was able to secure a clear majority of seats in six out of eleven provinces. Its leaders were therefore invited by the respective Governors to form Ministries. The Congress, however, demanded, as a condition precedent to the acceptance of the invitation, a definite assurance from the Governors that they would not exercise their special powers of interference so long as the Ministers acted within the constitution. As no such assurance was given, the majority party refused

to form the government and there was a deadlock. Interim Ministries were formed by the minority parties and they temporarily carried on government till a few weeks before the legislatures were due to be summoned for their very first session. In other provinces, popular Ministries enjoying the confidence of the legislature began to function from the very beginning.

2. The Viceroy's Statement

THE VICEROY'S STATEMENT In the meantime, in July 1937, the Viceroy issued a lengthy and comprehensive statement to clarify the whole constitutional position and to explain how the new machinery was expected to work in its daily routine. He desired to remove misapprehensions and misunderstandings that had arisen in the public mind. The following succinct summary is taken from the statement itself. It contains an authoritative pronouncement of the views of the Secretary of State, the Governor-General and the provincial Governors.

'The executive authority of a province runs in the name of the Governor: but in the ministerial field the Governor, subject to the qualifications already mentioned (in respect of Special Responsibilities) is bound to exercise that executive authority on the advice of Ministers. There are certain strictly limited and clearly defined areas in which, while here as elsewhere the primary responsibility rests with Ministers, the Governor remains ultimately responsible to Parliament. Over the whole of the remainder of the field Ministers are solely responsible, and they are answerable only to the provincial legislature.

'In the discharge of the Governor's Special Responsibilities, it is open to the Governor, and it is indeed incumbent on him, to act otherwise than on the advice of his Ministers if he considers that the action they propose will prejudice the minorities, or excluded areas, or other interests affected. The decision in such cases will rest with the Governor, and he will be responsible to Parliament for taking it. But the scope of such

potential interference is strictly defined and there is no foundation for any suggestion that a Governor is free, or is entitled, or would have the power to interfere with the day-to-day administration of a province, outside the limited range of the responsibilities specially confided to him

‘Before taking a decision against the advice of his Ministers even within that limited range, a Governor will spare no pains to make clear to his Ministers the reasons which have weighed with him in thinking both that the decision is one which it is incumbent on him to take and that it is the right one. He will put them in possession of his mind. He will listen to the arguments they address to him. He will reach his decision with full understanding of those arguments and with a mind open to conviction. In such circumstances, given the good will which we can, I trust, postulate on both sides, and for which I can on behalf of His Majesty’s Government answer so far as Governors are concerned, conflicts need not in normal situations be anticipated

‘The design of Parliament, and the object of those of us who are the servants of the Crown in India and to whom it falls to work the provisions of the Act, must be, and is, to ensure the utmost degree practicable of harmonious co-operation with the elected representatives of the people, and to avoid in every way consistent with the Special Responsibilities which the Act imposes, any such clash of opinion as would be calculated unnecessarily to break down the machine of government, or to result in a severance of that fruitful partnership between the Governor and his Ministers which is the basis of the Act, and the ideal, the achievement of which the Secretary of State, the Governor-General, and the provincial Governors are all equally concerned to secure’

3 Popular Ministries in Office

FORMATION OF CONGRESS MINISTRIES After the issue of this statement the Congress Party decided to accept office, and the Government in eight provinces soon

came into the hands of its leaders. It was found that, apart from the intrinsic difficulties and limitations of the Act, the Governors were, on the whole, working in a spirit of co-operation and goodwill with Ministers, many of whom had in the past actively participated in the struggle against a bureaucratic government and been sent to jail for sedition or civil disobedience. A crisis did arise in February 1938 in the United Provinces and Bihar when the Ministries felt compelled to resign because the Governors concerned and the Governor-General could not agree with them on the question of the release of political prisoners. But even such a grave crisis was ultimately overcome by negotiation and explanation, and the Ministries returned to duty after it was made clear that it was not the Governor's intention to obstruct them. The same was true of the crisis that arose in Orissa over the appointment of a subordinate bureaucratic official as the Governor of the province. After the withdrawal of the Congress Ministries in November 1939, Mahatma Gandhi declared that the Governors on the whole had 'played the game'. It must also be said that the Ministers on their side endeavoured to remain within the bounds of the Act and did not give any provocation to the Governors to exercise their special powers. The cordiality of their mutual relations was publicly testified to both by the Ministers and the Governors.

STRENGTH OF MINISTRIES IN RESPONSIBLE GOVERNMENT

The secret of the success of responsible or parliamentary government lies in the strength and effectiveness of Ministers. The strength and effectiveness of Ministers depend upon the amount of support which they are able to command in the legislature, apart from the personal calibre of the men who form the Cabinet. A strong, well-organized, well-disciplined political party which succeeds in capturing a clear majority of seats in an elective chamber naturally becomes a mighty force. It reflects contemporary public opinion and is vitalized by the knowledge that it has a definite mandate from the public to carry out its programme.

When the leaders of such a party, conscious of its enormous strength, are installed in office as Ministers, it would be very difficult and also very imprudent for the Governor to try to domineer over them or to treat them with contempt. A conflict with persons who have an overwhelming backing both in the legislature and in the nation would be really a conflict with the people at large. No head of a province can lightly provoke such a grave calamity. He would be unable to obtain any alternative government, and in the end the constitution would have to be suspended.

THREE YEARS' EXPERIENCE After the establishment of popular Ministries consequent on the introduction of provincial autonomy, the whole atmosphere of provincial government radically changed. For the first time in the history of British rule in India, the sense of an unbridgeable distance, a profound gulf, between the government and the people appeared to vanish. The Ministers are known and felt to be of the people, organically one with them, leading the country and also being led by it. That is the role played by Ministers in responsible democracies. In fact, during the first three years after the introduction of provincial autonomy, ministerial programmes were pursued vigorously, even though they often involved serious departures from the principles and practices of the old order. There was dynamic activity in all respects. Questions like education, prohibition, tenancy, agricultural indebtedness, rural development, industrial wages and disputes, etc., were being tackled with promptness and energy. Most of the political prisoners in British India were set free under the orders of the provincial Ministers, and a much more liberal concept of civil liberty came to prevail. Two striking instances may be cited to show that in Provincial subjects the transfer of power to the people of the province was found to be real. In 1938, the Bombay Ministry, with the full support of the legislature, restored to their original owners all lands that were confiscated by the previous bureaucratic Government as a penalty for having participated in the Civil

Disobedience movements of 1930-32 At about the same time, the Madras Ministry ordered the removal of the statue of General Neill from its prominent public situation in Madras

RESULT OF PROVINCIAL AUTONOMY This quickened tempo in legislative and executive action must be attributed to the advent of provincial autonomy. Governors and the Services did seem to realize the inherent strength of a Ministry commanding immense popular confidence, and some salutary precedents in the operation of the new machine did seem to have crystallized. The Bihar and United Provinces crisis, already referred to, appeared to have established the principle that whenever Ministers are prepared to take responsibility for the consequences of measures proposed by them, they will not ordinarily be overruled by the Governor

VIEWS OF THE GOVERNOR OF BOMBAY In a speech delivered in Bombay in February 1939, Sir Roger Lumley, Governor of Bombay, raised 'a part of the veil which shrouds the mysteries of a Governor's life' and gave a glimpse of the working of the constitutional machine. The following short summary of the speech will be found illuminating

'On the Governor, I suppose, in former days lay the main responsibility for initiating the controlling policy. That is now the responsibility of his Ministers and the most important service which the Governor can render is to ensure that that is a reality

'There are, I think, some people who imagine, and some who would like to see, a continual struggle going on between the Governor and his Ministers for control of policy. They are wide of the mark. These reforms would be meaningless if that were the case. There are others, I know, who have not yet become accustomed to this change, and who look to the Governor to deliver them out of all their afflictions. I can assist them by ensuring that their troubles are not overlooked, but the responsibility for decision on their cases lies with my Ministers, and I would not wish it to be thought otherwise

'Instead, therefore, of the continual interference which was, in some quarters, feared would be the result of these [the Governor's] special [powers and] responsibilities, there is rather a continual vigilance, watching to ensure that he should not be driven to use his powers, and this can lead to mutual co-operation .

'[The Governor] must preserve the spirit in which the Constitution was conceived, which was the spirit of self-government he must be equipped to discharge the special functions laid upon him but without, as far as he can make it possible, disturbing that spirit, he has his own contribution to make, if he can, to the success of government and he must remain impartial, a neutral in politics, not a protagonist'¹

ESTABLISHMENT OF CONVENTIONS It is a truism of political science that a constitution cannot be judged merely by its language and external appearance. An attempt has to be made to find out the reality of its actual working, the traditions which mould its operation, the social purposes it strives to fulfil, the way in which the community reacts to its functional existence. A constitution often grows and takes shape by the development of customs and conventions, as is amply evidenced by the example of Britain. It is to be hoped that the special powers, responsibilities, and reservations which abound in the structure of the Act of 1935 will be rendered a dead letter in actual practice.

Unfortunately, the present world war has seriously interrupted the progressive realization of the benefits of provincial autonomy. It has overshadowed the whole political and economic scene, and in the nature of things the vigour of activity in many of the peace-time nation-building departments has necessarily slowed down. Matters were further complicated when the Congress ministries tendered their resignations in November 1939. As no alternative ministries were possible, popular government in those provinces was entirely suspended and the old system of bureaucratic rule was re-established in a large part of India. It must also be noted that

¹ *Times of India*, 21 Feb 1939

even in the non-Congress provinces where provincial autonomy is still working, serious allegations have been publicly made by Premiers and Ministers against what were described as the high-handed actions of the Governors (for example in Bengal and Sind) Experience has, besides, revealed that the autonomy and freedom of a province cannot be easily reconciled with the urgent need of a strong, centralized and common action in the interest of the whole country in times of a grave emergency This has been amply proved in regard to the food problem of the country in recent months It may be hoped that things will become very much better and brighter after the abnormal situation created by the war comes to an end

PART VI

GENERAL

XXIX

SUB-DIVISIONS OF THE PROVINCE AND THEIR ADMINISTRATION

DIVISION OF A PROVINCE. It is proposed to give here a short description of the system of administration in the province as distinct from the controlling organization at headquarters. An Indian province comprises a vast area, very often as big as the area of some of the larger countries of Europe. It would therefore be physically impossible to conduct its administrative business without further sub-dividing the area into smaller units and distributing Government authority amongst subordinate officers, with a supervising agency above them. There is great diversity of conditions in the provinces. There is also some variety in the scheme of decentralization of authority within the provincial area. However, the District is the unit common to all provinces.

THE DIVISION In some provinces, the Districts are grouped together into bigger units called Divisions for purposes of administration. In Bombay for instance there are three such Divisions, the northern, the central and the southern, with their headquarters in Ahmedabad, Poona and Dharwar respectively. They follow,

broadly speaking, the linguistic distribution of the province into Gujerat, Maharashtra and Karnatak. In some provinces, though not in Bombay, there is what is known as the Board of Revenue which functions in the capital. It is the chief revenue authority in the province and forms an appellate court in rent cases.

THE COMMISSIONER AND HIS DUTIES. At the head of each Division there is an officer called the Commissioner, who is a senior member of the Indian Civil Service. He is the principal adviser of Government as to the action to be taken on every proposal about district administration which has to go to Government from Collectors and from some other officers. He is also responsible for securing that the policy of Government in various matters is fully carried out by Collectors and some other officers.

The Commissioner has relations with practically every department of administration in his Division, though each operates directly under its own chief. In some cases his control is more effective than in others. For example, though the Inspector-General of Police is the head of the police department and looks after its technical side, the Commissioner is responsible for the general police administration in his Division, either through the District Magistrate or directly. Many important powers are also exercised by him, in respect of municipalities, local boards and village panchayats.

The Commissioner has also to hear appeals against the decisions of the Collectors in matters of land revenue, and against the orders of the District Magistrates with respect to the maintenance of law and order under the District Police Act.

THE DISTRICT The District is invariably the unit of administration in all provinces and is therefore of vital importance. In size the District varies from province to province and even from place to place in the same province. Its area varies from two to ten thousand square miles and its population from one to three million souls. Its average size is given as 4,430 square miles by the Montford Report. Some of the bigger Districts

exceed the population of Switzerland, or the area and population of Denmark. The officer in charge of the District is known as the Collector.

THE COLLECTOR The Collector is the representative of the British Government in the District, representing the concentrated authority of British rule. He is in touch with every inch of territory in the District through his subordinates, the Mamlatdars and the village officials. The Collector is much more than the head of the revenue department in the District, and has been described as the pivot on which the District administration turns. He is expected to superintend the working of all the important departments within his territorial jurisdiction, and thus serves as an agent for maintaining the efficiency and coherence of the governmental machine as a whole. He has the dual capacity of Collector and Magistrate and performs a large number of functions of many kinds.

As a Collector he is responsible for the collection of land revenue both on agricultural and on non-agricultural land in the District, and also forest revenue. He holds abkari sales and issues licences to vendors of liquors and narcotic drugs like opium, and takes steps for preventing smuggling. It is his duty to administer the Watan Act, which deals with Inams, and to make grants of loans to needy agriculturists out of funds supplied by Government. The Collector is in charge of the treasury and is responsible for the 'due accounting of all moneys received and disbursed, the correctness of the treasury returns and the safe custody of the valuables which it contains'. He has some powers in respect of local bodies like municipalities, local boards, and village panchayats.

As a District Magistrate, the Collector has both executive and judicial duties. He is at the head of all the magistrates in the District and has himself the powers of a first-class magistrate. He can also hear appeals from the decisions of second-class and third-class magistrates. In fact he is responsible for the administration of the criminal law in the District. It is the duty of the District Magistrate to maintain law and order in the District,

and for that purpose he controls the Superintendent of Police in administrative matters. He also issues licences under Acts like the Arms Act and the Petroleum Act

The Collector is the district registrar, and as such controls the administration of the registration department. He has also to see to it that in matters of sanitation proper steps are taken by the local bodies, particularly on the outbreak of epidemics.

Collectors and their staff are officers intimately known to the people, coming into constant contact with them for a hundred reasons, and are the vehicles for conveying the orders of the Government to the people at large. During a large part of the year, the Collector has to move out to the different villages in his District, supervising the work of his subordinates and getting into direct touch with the people and the problems of administration. He is the eyes, the ears, the mouth, and the hand of the Provincial Government within his District and serves as its general representative.

VARIED NATURE OF HIS DUTIES The organization of the collectorate is 'so close knit, so well established, and so thoroughly understood that it simultaneously discharges an immense number of other duties with ease and efficiency. Registration, alteration and partition of holdings, management of indebted estates, loans to agriculturists, settlement of disputes, and above all famine relief, are all matters which are dealt with by this agency'. The Collector is a 'strongly individualized worker in every department of rural economy'. Sir John Strachey said that because the Collector was the representative of a paternal, not constitutional, government he had to perform a large number of functions connected with a variety of departments like police, jails, municipalities, roads, education, sanitation, dispensaries, local taxation and so on. 'He should be a lawyer, an accountant, a financier, a ready writer of State papers. He ought also to possess no mean knowledge of agriculture, political economy and engineering'. He is directed to keep himself informed and to watch the operation of every-

thing that passes in the District 'The vicissitudes of trade, the state of currency, the administration of civil justice, the progress of public works' must engage his attention as much as protection of life and property and maintenance of peace.

IMPORTANCE OF HIS OFFICE In short, the Collector of the District is the most important officer in the bureaucracy of India because of the first-hand personal knowledge that he has the opportunity to acquire about the people and problems of his District. He is in the closest possible touch with the realities of the situation. He enjoys a large measure of local independence and initiative. On his resource, efficiency and presence of mind depends the smooth course of administration in the District. Officers trained as Collectors in the various Districts of a province and who have therefore acquired the most valuable personal experience and knowledge of the country with the government of which they are entrusted, are raised to the offices of Commissioners and Executive Councillors, and some to those of provincial Governors.

OTHER OFFICERS The capital city of the District is the Collector's headquarters. Here are stationed the heads and the offices of various specialized departments which have to function within the area of the District. Establishments for irrigation, roads and buildings, agriculture, industries, factories, co-operative credit, and medical relief, exist with their heads in most of the Districts to perform the special functions assigned to them. The District Judge, the Executive Engineer, the Civil Surgeon, the District Superintendent of Police, the Assistant Registrar of Co-operative Societies, are all officers who are the heads of their respective departments in the territorial jurisdiction of the District. They are controlled by their own departmental superiors, but the Collector has a considerable voice in regard to their administration. They have been compared to different sets of strings connecting the Government with the people. Their policies are influenced in a varying degree by the

head of the District. He is always there in the background 'to lend his support or, if need be, to mediate between a specialized service and the people'.

PRANT OFFICERS AND MAMLATDARS The District is further split up into smaller divisions. These sub-divisions are under Prant officers who are either junior members of the Indian Civil Service called Assistant Collectors, or members of the Provincial Service styled Deputy-Collectors. The general revenue and magisterial charge of the sub-division is vested in the sub-divisional officer, subject to the control of the Collector. Arrangements within the division vary in the different provinces. In Bombay, the District is sub-divided into talukas, each of which has as its head an officer known as the Mamlatdar. He is to the taluka what the Collector is to the District, though in a diminutive measure. He has revenue and magisterial powers and has to supervise the working of the administration within his area. He has also other diverse duties. In fact, he is practically the general administrative officer of the Government in the area given to his care, namely the taluka.

VILLAGE OFFICIALS Lastly, at the basis of the system comes the Indian village with its organization of great antiquity still finding a place in the new system with certain necessary modifications. The headman, called the Patil or Patel, is the chief officer in the village and is responsible for the collection of revenue and the maintenance of peace in the village. He has the assistance of a talati or village accountant, who has to keep the village accounts, registers of holdings and, in general, all records of land revenue. The village watchman is the rural policeman. Most of these offices were formerly hereditary and continued to be so till recently. The tendency, however, of modern times is to abolish the principle of heredity and to substitute a competitive test. The hereditary character of the kulkarni's or accountant's post has already disappeared and perhaps other posts may follow suit.

LOCAL SELF-GOVERNMENT

1. Importance of Local Institutions

GOVERNMENT MUST CREATE GOOD CONDITIONS OF LIFE. Local institutions are an important part in the structure of a modern state. Some of the most vital and obvious benefits of social life are obtained through them. It must be remembered that government is an instrument for the preservation and welfare of human society. After all, what is the end and purpose of all the complex political apparatus which civilized man has developed and is still developing? It is to bring about the moral and material happiness of the community, so that life can signify energy, joy and growth even to the meanest citizen. The constituents of this happiness in terms of visible utilities and services are not difficult to enumerate. They have reference to the actual routine of daily life.

KINDS OF SOCIAL UTILITIES For example, supplies of unadulterated milk, ghee, butter and other foodstuffs, plentiful filtered water for drinking purposes, an effective drainage system and other conservancy arrangements, healthy residential quarters with clean and cheerful surroundings are important factors which contribute to public health and comfort. Primary and vocational schools, libraries, museums, gymnasiums, swimming tanks, public parks and gardens, free medical dispensaries and hospitals, smooth and spacious roads, quick transport by bus and tram, fire engines, cheap gas and electricity service—these are amenities which make life attractive and worth living. They represent the fulfilment of organized human existence.

Yet it will be easily realized that in spite of their great national importance these subjects cannot be properly administered by the central authority of a nation. They are essentially local in their concept, local in the territorial extent of their utility and operation, and can best be

managed by the people who are directly affected by the nature of the management. It is for this reason that institutions like municipalities and local boards have come into existence in all advanced countries. They are elective bodies, and are invested with the powers of taxation, action and decision in respect of a specific sphere of governmental activity.

2. Growth of Local Institutions in India

Local institutions of some kind have always existed in the social fabric of India. They formed an integral part of the ancient Hindu polity, and also continued to function in Mussalman days. However, municipalities, local boards and village panchayats as they are found today are the creations of British rule.

HISTORY OF MUNICIPALITIES The Presidency towns of Madras, Bombay and Calcutta had municipal government from the early days of the East India Company. In 1850 an Act was passed in Bombay which provided that a municipal agency should be established in any town or suburb if the residents asked for it. A step forward was taken in 1873 when the principle of election was permitted. But it is with Lord Ripon's name that the establishment of local self-government in a liberal measure is associated. In 1882 his Government issued the famous Resolution, which has guided municipal legislation in all the provinces ever since.

RIPON'S REFORMS. The main points in Lord Ripon's reform were that in municipal bodies non-officials should preponderate, the system of election should be widely introduced, the chairmen should be non-official, that local bodies should have adequate resources and that Government control over them should be reduced. The object was declared to be 'to advance and promote the political and popular education of the people and to induce the best and most intelligent men in the community to come forward and take a share in the management of their own local affairs, and to guide and train them in the attainment of that important object'.

The Bombay Government passed an important Act in 1884 to give effect to these principles. Another Act was passed in 1901

DEVELOPMENT UP TO THE MONTFORD REFORMS After the recommendations of the Decentralization Commission of 1909, the Government of India issued an important Resolution in 1915 enunciating their policy of progressive reform of local bodies. Soon thereafter Mr Montagu's famous Declaration was made in Parliament, and the Government of India followed it up in 1918 with another Resolution, affirming the necessity of removing all unnecessary official control over local institutions, making them as representative as possible and giving them powers that were real and not nominal. Executive action was taken in 1920 to implement these principles, when the franchise was lowered and the nominated element was fixed at not more than one-fifth of the total number of members of a municipality.

CHANGES THEREAFTER Local self-government became a Provincial and Transferred subject after the Montford Reforms, and all the Provincial Governments displayed great zeal for the progress of local institutions. Many Acts for this purpose were passed in Bombay between 1921 and 1937. In 1924 the right of vote was given to women, and on the whole the constitutions of municipal bodies were liberalized during this period. A large percentage of the population secured the franchise and the powers of municipalities were increased. After the introduction of provincial autonomy the subject received further attention from the Congress Ministries, and the Bombay legislature passed in 1938 an important amending Act called the Bombay District Municipal and Municipal Boroughs (Amendment) Act. The main reform that it introduced was to abolish the system of nomination of members.

HISTORY OF LOCAL BOARDS Local Boards are bodies which look after local affairs in rural areas. No such boards existed in India up to 1870, in which year the District Local Fund Committees were established. The decentralization scheme of Lord Mayo pointed to a

possible advance in the scheme After Lord Ripon's Resolution of 1882 the Bombay Government passed an Act in 1884 by which a local board was established for every District and also one for each taluka The Collector was to be *ex officio* president, and the number of elected members was to be not less than one-half of the total number of members

The position was reviewed in 1915, and, as the condition of the Boards was found to be unsatisfactory, certain changes were made The number of nominated members was reduced, and in some selected Districts non-officials, were appointed as presidents The Bombay Local Boards Act was passed in 1923 It fixed the elective element at a minimum of three-fourths of the total number of members and enlarged the franchise considerably The Act of 1938 abolished the system of nomination altogether and made all seats elective.

TALUKA BOARDS By the Act of 1935, the Bombay Government was empowered to abolish taluka local boards whenever they considered it necessary in the interests of the public to do so In the exercise of this power those boards were abolished in 1938 It was found by experience that the only body which could function efficiently for the whole area of the District was the District Board, and that the small organization for a taluka could have no effective resources or powers left to it

VILLAGE SANITARY COMMITTEES The village has been the primary territorial unit of government organization in India from ancient times Even today, about ninety per cent of the Indian people live in villages. Through all the vicissitudes of India's political life, the village has maintained its position intact to a great extent. In the opinion of some eminent writers it has served to conserve the vitality of the Indian nation Village communities in ancient days were in many respects self-governing and were not much affected by the laws passed by the central authority

In Bombay, after the advent of the British rule, village sanitary committees or boards were first formed

by an Act of 1889. It was amended in 1931. These bodies have no power to impose taxes but may raise voluntary subscriptions and receive contributions from the District Boards. They are expected to help in improving the sanitary condition of the village. A board consists of not less than seven members, as the Collector may direct, and of these not less than two-thirds must be elected. It is expected that these village committees and boards, as also the notified area committees, will be transformed in the near future into municipalities.

VILLAGE PANCHAYATS With the passing of the Bombay Village Panchayat Act in 1920 the first step was taken in introducing self-government in the village. As its working was not found to be satisfactory, further inquiries were made and another Act was passed in 1933. Panchayats were to be brought into existence on demand from the villagers, the franchise was extended to women, increased powers of taxation were conceded to these bodies, and they were permitted to try certain civil and criminal cases of a petty nature. Almost all the members were elected, though the patel was there *ex officio* and the Collector could nominate not more than two members. The panchayat was required to perform for the village those duties which municipalities performed for cities, and it could levy taxes on houses and lands, fairs and festivals, sale of goods, octroi, marriages, etc. By the Village Panchayat Act of 1939 provision has been practically made for adult franchise, and every village with a population of 2,000 and more must have a panchayat.

3. Constitution of Municipalities and Local Boards

THREE TYPES OF MUNICIPALITIES There are three types of municipalities in the province of Bombay. The first is represented by what is known as the municipal corporation which functions for the city of Bombay. Similar bodies exist for Madras and Calcutta. These are big cities and are given special treatment in view of their importance. Separate Acts are passed by the provincial legislature to prescribe the constitution, functions and

powers of each one of these corporations. Their presidents are called Mayors

The second type is represented by what were formerly known as city municipalities, and are now called borough municipalities. They function for cities the population of which is not less than 15,000, and are governed by the Bombay Municipal Boroughs Act of 1925, as amended subsequently several times, the latest amendments being passed by the legislature in 1938 and 1939. The number of borough municipalities is 28 at present.

In the third type are included municipalities of the smaller towns which have the right of having a municipality of their own. They are governed by the District Municipal Act of 1901 which has been amended several times subsequently, the latest amendments being enacted by the legislature in 1938 and 1939. The number of such District municipalities is 101 at present.

DISTRICT BOARDS For the rural area of every District there is established a District Local Board. The constitution, functions and powers of these bodies are prescribed by the Bombay Local Boards Act of 1923 as amended subsequently by several measures, the latest amendment having been effected in 1939. The number of these local boards is 20 at present.

MEMBERS. The total number of members of a municipality or a District Board is to be determined by the Provincial Government from time to time and it varies according to the size and population of the area concerned. All the seats in these bodies are now elective, the system of nomination having been abolished in 1938. They elect their own presidents from among themselves and similarly elect vice-presidents.

FRANCHISE The franchise for election to local bodies is now fairly low. For instance, in borough municipalities, the right to vote is conferred on those citizens who occupy as owners or tenants a house of which the annual rental value is not less than Rs 12 or the capital value of which is not less than Rs 200, and on all those who pay any tax other than octroi, toll, or a tax on vehicles and animals plying for hire. In the case of a District

Board, all the residents of the District who are voters at elections to the Bombay Legislative Assembly, and also those who are assessed to any tax imposed by the board other than octroi or toll, are given the right to vote at the board's election. It has been estimated that according to this franchise, 21 per cent of the municipal population and 9 per cent of the population in the local board areas enjoy the right to vote. If adult franchise is introduced this percentage will go up to 50.

THE GENERAL BODY All the members of a municipality or local board constitute what is known as its general body, which discusses and decides all questions of policy and important details in regard to municipal administration and problems. In the general body are vested the powers of passing the budget, imposing taxation, voting expenditure and making rules and regulations which have to be obeyed by the citizens. It represents the people within its jurisdiction and is the primary democratic body in the organization of the state. What the legislature is in the working of the Provincial Government, the general body of a municipality or District Board may be said to be in the working of local government.

COMMITTEES For the convenient transaction of business and efficiency of supervision, the general body of a municipality or local board is permitted to appoint various committees composed of its own members. The most important of these is the standing committee, which exercises general control over and takes the initiative in respect of the conduct of the municipal machine.

EXECUTIVE OFFICIALS For carrying on the work of local government a trained and capable administrative staff is required. Municipalities and local boards are therefore allowed to appoint officials like the chief officer, the engineer, the health officer, the officer who looks after education, and so on. These are assisted by a large number of inspectors, accountants, clerks and menials. In the case of Bombay, Madras and Calcutta the chief officers are called municipal commissioners and they are

generally senior members of the ICS. They are appointed by the Provincial Government except in Calcutta, where the appointment is made by the corporation itself. Otherwise, the executive of a municipality or a local board is now appointed and controlled by those bodies themselves.

4. Function and Sources of Income

OBLIGATORY FUNCTIONS The functions of local institutions like municipalities and local boards are divided into two classes, obligatory and discretionary. In the former category come the duties of lighting public streets and places, watering public streets and places, cleansing public streets and places; removing noxious vegetation, extinguishing fires, regulating or abating offensive or dangerous trades, acquiring and maintaining places for the disposal of the dead, constructing, altering and maintaining public streets, markets, slaughter-houses, drains, privies, washing places, drinking fountains, tanks, wells, etc., obtaining supply of water, registering births and deaths, public vaccination; establishing and maintaining public hospitals and dispensaries; establishing and maintaining primary schools, etc.

DISCRETIONARY FUNCTIONS Among the discretionary functions may be mentioned the laying out of public streets, constructing and maintaining public parks, gardens, libraries, museums, lunatic asylums, rest houses, dharmshalas and other public buildings, taking a census, making a survey, payment of salaries and other monetary charges incidental to the maintenance of any court of a stipendiary or honorary magistrate; maintaining a farm or factory for the disposal of the sewage, and any other measure likely to promote public safety, health, convenience or education. The functions of Local Boards are, of course, mainly concerned with objects of rural importance and rural necessity.

THE NEED FOR LOCAL SELF-GOVERNMENT The enumeration of the above lists will make it clear that municipalities or local boards are entrusted with duties which

can best be performed by local bodies. Local self-government is, in fact, a process of political devolution. The principle which underlies it involves the conception of local autonomy. Both in the larger interests of the State and in the narrower interests of the local area and its population, the delegation of powers and freedom to local bodies is considered to be desirable. It secures efficiency and economy of administration. What is more important, it has an excellent educative effect, inasmuch as it supplies a training ground for politicians and public workers. The consciousness of liberty and the sense of responsibility and personal interest in the management of administrative affairs are moral influences in themselves.

It will be observed that District Boards are not called upon to perform exactly the same duties as municipalities in cities, though on the whole the nature of the two duties is the same. The District Board looks after the rural area of the District, the municipality is concerned with the urban limits of the city. The needs of the two may be slightly different, for instance, the maintenance of public roads for communication between village and village may be a more onerous duty for a District Board than the maintenance of streets in the city. Still, after allowing for the variation in the importance of particular items, the functions of municipalities and District Boards will be found similar to a great extent.

SOURCES OF INCOME In order to enable them to incur the expenditure that would be involved in the performance of their duties, powers of obtaining income by means of taxation and fees must be allowed to local bodies. Taxes can be levied upon and fees collected from the specific areas demarcated as belonging to the municipality or the Local Board. Their jurisdiction is precisely defined. The kinds of taxes which local bodies can impose are as follows: (i) A rate on buildings or lands or both, (ii) a tax on vehicles, (iii) an octroi duty on goods or animals or both, (iv) a tax on dogs, (v) a special sanitary cess on private latrines, etc.,

(vi) a general or special water rate, (vii) a lighting tax, (viii) a tax on pilgrims, (ix) a tax upon drainage, (x) general sanitary cess, (xi) a special educational tax, (xii) terminal tax, (xiii) toll on vehicles.

In the case of Local Boards, the most important source of income is the cess upon land. It can be collected at a rate of up to two annas in the rupee along with land revenue. Most sources of income that are available in a populated city are not available in rural areas and villages, and therefore a special source of income has to be devised for them. The imposition of local rates upon lands for local purposes is the most satisfactory method of giving income to the District Boards. The rates are collected by the same agency which collects land revenue for the Government, and the District Boards are not required to spend any large amount of money for the machinery of collection. The board can also levy tolls, profession taxes and a cess on the water rate charged by the Government to irrigated lands.

XXXI

JUDICIAL ADMINISTRATION

1. Importance of the Judicature

GUARDIAN OF CIVIC PRIVILEGES The judicature forms an integral part of the organization of the state. Its chief importance lies in the fact that it is specially charged with the duty of preserving and protecting those liberties, privileges and rights which the state itself confers upon its individual citizens. There are two possible dangers of invasion on this civic assurance. A private citizen may act contrary to law and endeavour to assert his superiority against a weaker victim. Or the same crime may be committed by officials of the state. Justice must be fully vindicated in both the cases. It is the function of the judiciary to study the law, to interpret it and to see that it is correctly applied. Judicial commands must effectively prevail even against the highest authority of the state or the most wealthy classes of its citizens if it is proved that they are guilty of illegal action. Such a guarantee constitutes one of the best safeguards for the preservation of human civilization.

QUALITIES REQUIRED IN A JUDGE It is therefore of the utmost importance that judges are men of supreme integrity, of a fearless disposition and thoroughly independent and impartial in their outlook. They must also be profoundly learned in law and widely experienced in the affairs of men and the world. A capacity for cold, logical reasoning and also a sympathetic, human insight must be found mingled in their temperament. An attempt must be made by the state to discover persons of these requisite qualities and to create for them an atmosphere of judicial dignity and detachment, so that the danger of their being polluted by corruption of any kind is reduced to the minimum. A judge has been regarded as a very venerable person in the social life

of all countries from very early times, and judges have played an important, often a decisive, part in public affairs

2. Organization in the Provinces

THE HIGH COURTS

THEIR COMPOSITION At the head of the judicial organization in the provinces stand the Indian High Courts. These bodies were first created by the Act of 1861 and their constitution, powers, salaries, leave, etc., are now prescribed by sections 219-31 of the Act of 1935. Every High Court is composed of the Chief Justice and other judges, the maximum total number in each court, besides the Chief Justice, being fixed as follows: Madras 15, Bombay 13, Calcutta 19, Allahabad 12, Lahore 15, Patna 11, Nagpur 11, Oudh Chief Court 5, Sind, one Judicial Commissioner and five Assistants. All judges of a High Court are appointed by His Majesty. The Governor-General-in-Council may appoint additional judges, having the same status and powers as permanent judges, for a period of not more than two years. The judges must be either barristers of England and Ireland or advocates of Scotland of not less than five years' standing, or members of the Indian Civil Service of not less than ten years' service, at least three of which have been spent as District Judges or officials in judicial service of a grade not less than the grade of a subordinate judge of at least five years' service, or pleaders of an Indian High Court of not less than ten years' standing. A judge can hold office until he attains the age of sixty years.

THEIR SALARIES The salaries, allowances, leave, pensions, etc., of High Court Judges are fixed from time to time by His Majesty-in-Council. All this expenditure is charged upon the revenues of the province and is not votable by the legislature. The following amounts of salary per year have now been prescribed: Chief Justices of Calcutta and Nagpur, Rs. 72,000 and Rs. 50,000 respectively; Chief Justices of the other High

Courts, Rs 60,000 each, Judges of all the High Courts and the Chief Judge of Oudh, Rs 48,000 each, Judges of the Oudh Chief Court and the Sind Judicial Commissioner, Rs 42,000, Judges of the Nagpur High Court Rs 40,000

THEIR JURISDICTION The jurisdiction of the High Courts is extremely wide, comprising as it does both original and appellate authority, including admiralty jurisdiction in case of offences committed on the high seas. They have all powers in relation to the administration of justice, including power to appoint clerks and other ministerial officers of the court, and power to make rules for regulating the practices of the court. They have to superintend the working of all courts subject to their appellate jurisdiction, and may for that purpose call for returns or direct the transfer of any case from one court to another and prescribe the rules of practice, and proceedings, and forms in which book entries and accounts shall be kept by them.

THEIR POWERS The High Courts have both original and appellate jurisdiction in civil as well as in criminal matters. They function as original courts for the Presidency towns in civil cases in which the amount of money involved exceeds Rs. 2,000 and in criminal cases when these are committed to them by the Presidency Magistrates. As appellate courts they hear appeals both in civil and criminal matters from all places in the area under their jurisdiction, entertaining appeals also from their own original sides. The High Court judges being directly appointed by His Majesty to hold office during his pleasure, and their salary being fixed under law, that degree of independence which is required in the highest provincial tribunal is secured to them to a great extent.

There is a separate court known as the Court of the Judicial Commissioner in Sind. The High Court of Bombay had no jurisdiction over that province even before its separation from Bombay. The Judicial Commissioner's Court is the highest court of appeal in Sind and is also the District and Sessions Court of Karachi. Since September 1923 criminal and matrimonial juris-

diction over European British subjects in Sind is vested in it

CRIMINAL COURTS IN THE DISTRICTS

SESSIONS COURTS. Below the High Court there are subordinate courts for the disposal of civil and criminal business. We will deal with the criminal courts first. Every province is divided into sessions divisions, which are usually identical with the area of the District. For every such division, the local Government must establish a Sessions Court and appoint a Sessions Judge and if necessary additional or assistant sessions judges. These Sessions Courts function in their prescribed territorial jurisdiction. They are competent to try all criminal cases committed to them and to inflict any punishment authorized by law. Every sentence of death passed by them is, however, subject to confirmation by the highest court of criminal appeal in the province. The Sessions Court is also a court of appeal against the decision of the magistrates subordinate to its jurisdiction.

MAGISTRATES—FIRST, SECOND AND THIRD CLASS. Below the Sessions Court are courts of magistrates. These are divided into three classes. The First Class magistrate has power to pass a sentence of up to two years' rigorous imprisonment and a fine of an amount up to Rs. 1,000. The Second Class magistrate can pass a sentence of up to six months' rigorous imprisonment and a fine of an amount up to Rs. 200. The Third Class magistrate can pass a sentence of up to one month's imprisonment and a fine of up to Rs. 50. Territorial limits are assigned to the magistrates and a detailed schedule set out showing the grade of magistrates competent to try various criminal cases. They have power to commit to Sessions Courts those cases which are out of their competence.

DISTRICT AND PRESIDENCY MAGISTRATES. In each District, the Collector, or the Deputy-Commissioner in the Non-Regulation Provinces, is appointed District Magistrate and in this capacity supervises the work of other

magistrates in the District. The subordinate revenue officials like Assistant and Deputy Collectors, mamlatdars, etc., have magisterial powers within their territorial jurisdiction. The District Magistrate distributes work among them. In the Presidency towns there are Presidency Magistrates, and in big cities City Magistrates, to dispose of criminal cases, and to commit the more important ones to the High Court or to the Sessions.

HONORARY MAGISTRATES Provision is also made for the appointment of honorary magistrates in big towns. Gentlemen of good social status who have leisure and who are desirous of doing public work are usually selected to fill the appointments. They usually work in a bench. They are divided into three grades of first, second and third class, and have the same powers as stipendiary magistrates in the respective grades. However, only petty cases are generally sent to them for trial, because they are not supposed to be experts in law.

JURY AND ASSESSORS Trial by jury in criminal cases is one of the most cherished privileges in a country like England. It has been acquired after a good deal of constitutional struggle. To the political thinker, the existence of such a privilege may or may not appear to be an unqualified guarantee of the impartial carrying out of justice. To some, it might positively appear to have large elements of imperfection which are bound to detract from the scientific and correct character of the verdicts given. The transaction of complicated judicial business by avowed amateurs, depending upon their common sense to discharge their duties, may not evoke enthusiasm in the mind of a critical theorist. But apart from the theory of the question, a description of the jury system as introduced in India is interesting.

Trial by jury is the rule in the original criminal cases before the High Courts. In the mofussil it is not considered always possible to empanel an efficient jury. Trials, therefore, are conducted either with the help of a jury or with the help of assessors. The difference between jurors and assessors is well known. The deci-

sion of the former is binding upon the judge, who rarely differs from them. The opinion of the assessors, on the other hand, is not binding and their advice may or may not be accepted by the trying judge. Where it appears to the Sessions Judge that the verdict of the jury is manifestly absurd or perverse, he has the power to disagree with them and refer the matter to the High Court, which has authority to quash the sentence

The jury in trials before the High Court consists of nine persons, and of an uneven number, prescribed by the local Government, in the mofussil courts¹ After the leading of evidence and arguments of counsels on both sides are finished, the judge explains the whole case to the jury, dwells upon the pros and cons of the case, explains the law under which the offence is alleged to have been committed, and leaves the final verdict to the discretion of the members of the jury The latter adjourn for some time to deliberate among themselves and give either a unanimous or a majority opinion

CIVIL COURTS IN THE DISTRICTS

DISTRICT COURTS The civil courts differ in nomenclature and in other respects in the different provinces, though the essentials are the same In Bengal, Agra and Assam there are three subordinate civil courts, the District Court, the Court of the Sub-Judges and the Munsiff's Court In Bombay there are those of the District Judge and the Assistant Judge and the First and Second Class Sub-Judges The officer who presides over the principal court of original civil jurisdiction in each District is known as the District Judge He exercises control over all the subordinate courts within the District, and assigns to assistant judges the disposal of such suits as he deems fit He has also to arrange for the guardianship of minors and lunatics and to manage

¹ Women have not yet been allowed to become jurors in India But it is interesting to note that the Bombay High Court has recently relaxed this restriction and women will now be allowed to be empanelled in a jury in the city of Bombay

their property There is no limit to the pecuniary jurisdiction of the District Court in original civil plaints. It also works as an appellate court in cases which have been disposed of by the courts of second class subordinate judges or in which the amount involved does not exceed Rs. 5,000.

SUBORDINATE JUDGES Below the District Courts there are judges of two subordinate orders in the Bombay province There are also Small Causes Courts in important towns The first class subordinate judge can try any civil suit irrespective of the amount of money involved He has no appellate jurisdiction whatever Appeals from his decision lie either to the District Courts or the High Court The second class subordinate judge has power to try cases in which the sum of money involved does not exceed Rs 5,000 He also has no appellate powers

SMALL CAUSES COURTS A first or second class subordinate judge is sometimes invested with the summary powers of a Small Causes Court judge The jurisdiction of the Small Causes Courts in the Presidency towns is limited to cases where the sum involved does not exceed Rs 2,000, and in other important cities to cases where it does not exceed Rs 500 There is no appeal from decisions of this court except on points of law and in certain cases which have been specified Courts of such summary powers are intended to facilitate the recovery of small debts and the quick disposal of minor litigation

In Bombay no subordinate judge could receive or register a suit in which any Government officer in his official capacity was a party Formerly such cases had to be referred to the District Courts The Civil Justice Committee of 1924-5 thought that such a restriction resulted in congestion of suits against the Secretary of State or officers of the Government, which the District Judge had no time to take up. Many such suits are of a minor character and therefore a relaxation of the restriction was necessary The law was therefore altered, and subordinate judges can now entertain such plaints

Another peculiarity of the Bombay system is the duty given to District Judges of managing a large number of estates of minors which are not administered by the Court of Wards. The routine management is done by the deputy-nazir. In consultation with him the judge has to carry out detailed supervision over matters connected with the revenue and expenditure of the estates of the minor and over his general health and upbringing.

THE DISTRICT JUDGE AND THE SESSIONS JUDGE ARE THE SAME PERSON. It must be noticed that in Bombay the District Judge presiding in the civil court is also the person who presides over the criminal or sessions court. The two courts and their jurisdiction are different, but the presiding officer over both is one and the same person. In actual practice, therefore, the District Courts and the District Judges, because of the combination of civil and criminal functions in their persons, possess extensive powers. They are courts having powers both original and appellate. They are courts having both civil and criminal jurisdictions. Besides, they control all subordinate courts in their Districts and to that extent possess certain administrative functions. The District Judge's office is therefore an office of importance. It is generally filled by members of the Indian Civil Service, though a certain percentage of the posts is reserved for members of the provincial service and sub-judges are promoted to them. A few practising lawyers are also directly recruited to hold the post. Most of the Assistant District Judges are junior members of the Indian Civil Service and some are taken from among the sub-judges or members of the Bar. They perform the duties that are assigned to them by the District Judge.

REVENUE COURTS. Side by side with the civil courts there also exist what are known as Revenue Courts. They are presided over by officers who are charged with the duty of settling and collecting the land revenue. In questions of assessment and collection, and in purely fiscal matters, the civil courts are generally excluded from interfering. They can, however, take cognizance of all questions pertaining to the title of land, and of

rent suits in some of the provinces, particularly in Bengal. The Collector constitutes the Chief Revenue Court in a District, and appeal from him lies to the Divisional Commissioner.

APPEALS

A JUDGE IS NOT INFALLIBLE In the imperfect human world, even a trained judge is liable to err. Sometimes his logic may prove to be faulty and his knowledge defective. He may be unconsciously swayed by obstinacy, prejudice, or passion. The conclusions at which he arrives in all sincerity may be at variance with facts. Some method has to be devised to minimize the chances of the miscarriage of justice which may result from the ineptitude or the fallibility of the judge. The system of appeals is instituted for that purpose.

WHAT IS AN APPEAL ? An appeal is a kind of petition and protest made by an aggrieved party against the decisions of a judge. In the nature of things, it must be heard by a superior tribunal, which can alter, reverse, or confirm the judgement of the trying court. The judge who hears appeals is expected to have better qualifications and experience than the trying judge. His verdict is supposed to be that of a wiser and more capable man.

NUMBER OF APPEALS There can be an appeal against an appeal by the same process of reasoning. However, the number of appeals allowed in an individual case must be severely limited. Otherwise, judicial business would become endless. A halt has to be called at some point. In India, two appeals are allowed in civil cases and only one in criminal cases. Applications in revision are allowed in the latter after the first appeal is heard and decided.

CRIMINAL APPEALS An appeal against the decisions of a second class or third class magistrate lies to the District Magistrate or to any first class magistrate specially empowered by him. An appeal against the decisions of a first class magistrate lies to the Sessions Court. An appeal against the decisions of the Sessions Court lies to the High Court. An application in revision

can be heard by the Sessions Court against the judgement in appeal of a first class magistrate, or by the High Court against the judgement in appeal of a Sessions Court. In cases which are tried by a jury the right of appeal is restricted.

CIVIL APPEALS In civil cases, an appeal lies from the second class sub-judge to the District Court, and a further appeal from the latter to the High Court. An appeal from the decision of a first class sub-judge goes to the High Court, and a further appeal lies from the latter to the Privy Council. The High Court can call for, and examine the record of, any proceedings before the subordinate courts. Appeals in cases decided by the Original side of a High Court lie to its Appellate side and if the question involved requires an interpretation of the constitution, to the Federal Court.¹

THE PRIVY COUNCIL The highest appellate court that exists for India is what is commonly known as the Privy Council. This court has no original jurisdiction and it functions in England. It is the court which hears final appeals in important cases from all parts of the British Empire, and is for that reason looked upon as a common bond which connects the judicial administration of the various parts of the Empire. An appeal to this body lies from the decision of the High Court sitting as an original or appellate court. In civil cases the amount involved in the dispute must be Rs 10,000 or upwards and in criminal cases some substantial question of law must be involved in order that an appeal to the Privy Council may be allowed. The appeal must lie, not on a point of fact, but on a point of law. Permission must be granted by the High Court to file an appeal to the Privy Council.

It now remains to discuss two important and interesting questions pertaining to the judicial administration of India. One refers to the privileged position enjoyed by Europeans in matters of procedure. The other refers to the principle of separation between the executive

¹For the appellate powers of the Federal Court, see pp 181-2

and judicial functions of the Collector and other revenue officials

3. Position of European Subjects

EARLY DAYS OF THE COMPANY'S RULE Originally, in the earlier years of the East India Company, the only courts which exercised jurisdiction over Europeans resident in India were the courts in the Presidency towns. They were Crown courts as distinguished from Company courts. In fact, before 1833, it was laid down that no British subject who was not in the service of the Company was to reside without permission at a distance of more than ten miles from the Presidency towns. The abrogation of this restriction in 1834 called forth from the Directors an unequivocal acknowledgment of the principle that Indians and Europeans should be subject to the same judicial control and that there could be no equality of protection where justice was not equally, and on equal terms, accessible to all. Accordingly, Europeans were made amenable to the civil courts outside the Presidency towns in 1836. The question of their trial by all the criminal courts was raised in 1849 and in 1857, but no definite conclusion was arrived at. European British subjects were tried for criminal offences only in the Supreme Courts at the Presidency towns. With the creation of High Courts in 1861, such trials were referred to them. In 1872, when Sir J. Stephen was the Law Member, ordinary criminal courts were empowered to try Europeans, but under a special form of procedure which was then framed.

THE ILBERT BILL CONTROVERSY As the Indian Civil Service was thrown open to competition and as Indians were allowed to occupy high offices in virtue of their having passed the test, the question arose as to whether they could be prevented from trying European criminals. In 1883 some Indian civilians reached the stage when they would be promoted to be District Magistrates or District Judges. The Government felt that any restriction on Indians in the matter of trying European criminals must be abolished. They therefore introduced what

has been since known as the Ilbert Bill enabling Indian Sessions Judges and certain Indian magistrates to exercise jurisdiction over European British subjects. The Bill aroused the most vehement opposition from European residents in India. The proposed equalization of the Indian and the European in the eyes of the law was so keenly resented by them that the Government had to bend to the fury of the storm; in 1884 a compromising measure was passed which enabled Indian judges and magistrates to try European criminals, and simultaneously gave to the British subject the right to claim a mixed jury, that is, a jury not less than a half of which consisted of Europeans.

THE SUMMARY OF THE RACIAL DISTINCTION COMMITTEE
The Racial Distinction Committee, which was appointed after the Montford Reforms to go into the whole question, thus summarized the principal distinctions between the trials of Europeans and Indians in Indian courts

(i) No British subject could be tried by a second class or third class magistrate or by a first class magistrate who was not a Justice of the Peace or a District or Presidency Magistrate or a European British subject

(ii) The jurisdiction of additional and assistant sessions judges was also much restricted

(iii) The sentences that could be passed by a first class or a District Magistrate and a Court of Sessions against European British subjects were specially circumscribed

(iv) Europeans were entitled to claim trial by a jury of which not less than a half would be Europeans or Americans

(v) They enjoyed more extensive Habeas Corpus privileges

(vi) They had more appellate rights in criminal cases than Indians

(vii) The usual terms of security for good behaviour might not apply to them if they could be dealt with under the European Vagrancy Act.

(viii) The definition of a High Court was not so wide in their case.

The recommendations of the Committee were to remove some of these distinctions. The right to claim a mixed jury, that is one composed of not less than a half of the nationality of the accused, has now been extended to Indians and Europeans alike.

4. The Separation of the Executive from the Judiciary

CRIMINAL JURISDICTION OF REVENUE OFFICIALS The question of the separation of executive from judicial functions has been engaging the attention of Indian politicians for more than half a century. In no part of British India indeed, at the present day, are executive and civil judicial functions combined in the same official. The same may be said of important criminal trials also. The Courts of Sessions and the High Courts, which are the superior criminal courts, are now presided over by officers who have no executive functions. The disputed question refers to the criminal jurisdiction that is still enjoyed by an executive and revenue official like the Collector or Deputy Commissioner, who, in addition to his civil duties, has also the designation of District Magistrate. In that capacity he is vested with extensive judicial authority and a power of control over subordinate magistrates in the Districts. Similar powers are also enjoyed by Assistant and Deputy Collectors and Mamlatdars of talukas.

The Collector is the officer who is held responsible for the peace of the District and is the superior of the District Police from the Superintendent downwards, except in departmental matters. As a first class magistrate he can take cognizance of offences and exercise all powers that are exercised by a magistrate of his grade. He can hear appeals from the magistrates of the second and third class. He can also transfer a case from one subordinate magistrate to another in his District and can call for the record of any case disposed of by them and refer it to the Sessions or High Court. His criminal powers are therefore wide.

ARGUMENTS AGAINST THE COMBINATION OF THE TWO FUNCTIONS A good deal of criticism has been directed for a long time against such a concentration of power. A memorial embodying criticism of the system was presented to the Secretary of State in 1889 by some distinguished members of the judicial service in India. The grounds of criticism are various. The union of judicial and executive functions is considered to violate the first principle of equity. It is pointed out that the very natures of the two duties differ, and require for their proper discharge two distinct types of mental equipment and outlook which cannot be simultaneously possessed by the same officials.

In the execution of their civil administrative business, the Collectors may come into conflict with individuals or institutions and it would be inexpedient and unsafe to invest them with judicial powers which could be utilized against these. That absolute detachment and aloofness which is necessary for the impartial carrying out of justice cannot be possessed by a magistrate who is also responsible for the peace of the District and who is therefore likely to entertain an unconscious bias in one direction or the other.

Nor is the control exercised by the Collectors over subordinate magistrates calculated to secure to them an atmosphere of cool impartiality. Sir Henry Cotton, himself a distinguished member of the Indian Civil Service, declares it to be a matter of universal knowledge that 'subordinate magistrates whose position and promotion are dependent on the District Magistrate cannot, in such circumstances, discharge their judicial duties with that degree of independence which ought to characterize a court of justice'. Threats like 'the sentence is inadequate, if this occurs again, I shall report your misconduct to Government' are quoted in his *New India* from the correspondence between a District Magistrate and his subordinate.

The combination of the two functions engenders a general distrust about the magistracy and cannot therefore advance the prestige of the executive. The

average citizen perceives in this unity of offices a danger to his civic liberty and an opportunity to Government officials for an effective display of vindictiveness. The Public Services Commission of 1916 readily agreed that the union of executive and judicial power in the Collector and his subordinates was theoretically an objectionable anomaly.

ARGUMENTS IN FAVOUR The advocates of the system maintain that in India no active public opinion in favour of the punishment of the wrongdoer has yet sufficiently developed and it is therefore necessary that the official agency should be endowed with an authority 'proportionate to the weakness of the support which it requires from the community at large'. It is also urged that the speeding up of the machinery of criminal justice cannot be safely entrusted to the already overburdened Sessions Judges. The advantage of the present system, it is alleged, lies, not in the actual exercise of his powers by the Collector in numerous cases, for he uses them in comparatively few cases only, but in his holding them in reserve. To deprive the Collector of this power would weaken his authority and influence in the District and would strike a fatal blow to the peace and order in the country. Arguments like these are characteristic of the protagonists of the *status quo*.

CRITICISM To accuse a whole nation of a dense insensibility to crime and to credit it with a degree of indulgence which might result in the acquittal of hardened criminals is indicative of the enthusiasm with which the supporters of the system are possessed and not of their capacity for a cool judgement. The plea for the maintenance of prestige is equally fallacious. Depriving the Collector of magisterial powers is not identical with diminishing the prestige of sovereignty. The separation simply implies a division of labour. It is not necessary to concentrate all the attributes and authority of Government in one and the same person to preserve the prestige of the ruling power. As the Memorial already referred to points out, the Viceroy need not lose his prestige because he does not directly

exercise the functions of the Collector and the District Judge. And in the same manner the Collector need not lose his prestige if his magisterial powers, the possession of which is apt to lead to miscarriage of justice and to inspire a feeling of distrust and suspicion in the administration, are transferred to another agency serving under the same Government

To a student of the constitution the separation of executive from judicial functions appears to be *prima facie* necessary. That alone can maintain the equilibrium between the various aspects of government and guarantee liberty and justice to the individual. The raising of the financial bogey is futile. The scheme of separation may or may not involve a vast amount of expenditure. But even if it does, the plea of an increase in expenditure cannot be allowed to throttle such a prime and vital element in democratic polity

It might be added that in the Presidency towns of Madras, Calcutta and Bombay, separation has already been effected, the Presidency Magistrates' courts being empowered to exercise the criminal jurisdiction which in the mofussil is exercised by the Collector. The Collector in Bombay and other Presidency towns is therefore purely a collector of revenue, and sooner or later he will function only in that capacity in all parts of the country

XXXII

LAND REVENUE

1. Historical

BEFORE THE COMPANY'S RULE. A tax upon land is one of the oldest forms of taxation. It was the principal source of income for governments in ancient times. The state claimed a share in the produce of the land. According to the description given by Manu, in ancient India the state's share in normal times varied between one-twelfth and one-sixth of the gross produce, and sometimes rose even to one-fourth if there was any exceptional calamity. Generally, it appears, the revenue was not collected from individuals but from a whole community which was represented by the headman.

With the advent of the Mohammedan power and its expansion throughout India, the system of land revenue collection underwent a change. Raja Todar Mall, the famous revenue reformer in Akbar's court, regulated the settlement and collection of the State's shares in the income from land. He gave orders for the measurement of land and its classification according to the fertility of the soil. The Government demand was fixed at one-third of the gross produce. It could be commuted into a money payment on the basis of the prices of the previous nineteen years. The settlements were concluded for a fixed period, usually ten years.

ZEMINDARS OR MIDDLEMEN. A number of middlemen and tax-gatherers intervened between the actual cultivator and the supreme power. They agreed to pay a lump sum of money for the portion of the country allotted to them and were armed with large powers to make the necessary collections from the villages. This class of middlemen or farmer of revenue later on developed into the zemindar class. As long as the central power was strong, the zemindar was appointed regularly by a warrant which declared his duties and the amounts

due from him. Usually he had to pay nine-tenths of the total collections and was allowed to retain one-tenth as remuneration for his labour. In addition, he was allowed some lands free of revenue for himself.

Originally the office of the zemindar was not hereditary, but with the decline of the central power, control over the zemindars slackened. They became more and more independent and practically established their sovereignty in the territory under their jurisdiction. Their payments to the central treasury became irregular. From being mere servants charged with the duty of collecting revenue, the zemindars developed into mighty potentates and assumed the position of independent Rajas.

The East India Company found itself faced with this situation when it acquired the provinces of Bengal, Bihar and Orissa in 1765. Many attempts were made by Lord Clive and Warren Hastings to organize an efficient system of land revenue collection, but none was successful. Legal rights had become extremely obscure and complicated, and it was often difficult to be sure that the burden of Government dues was being carried by the right shoulders. The Company's officers had very little experience or knowledge of Indian traditions. Unfortunately they were also susceptible to gross corruption. The method of assessing the revenue became therefore chaotic, and its actual collection was accompanied with such violence and terrorism that the people of Bengal found their position intolerable.

Lord Cornwallis was eager to remove these grave evils and to place the system on a sound basis. Elaborate inquiries convinced him that the only effective solution of the problem would be to introduce a permanent settlement. The Court of Directors gave their sanction to the proposal, and in 1793 the famous announcement was made that the settlements in the then existing territories of the East India Company in India were made permanent. Bengal, Bihar, Orissa, Benares, and the Northern Circars in the Madras Presidency came within the purview of this historic declaration.

MAIN FEATURES. The main features of the system

were that the zemindars were declared proprietors of the areas in their possession, subject to their paying the land revenue, and that the assessment then fixed was declared unalterable for ever. Approximately ten-elevenths of what the zemindars received in rent from the ryots was to be taken by the State, the remaining one-eleventh being left to the zemindar. The percentage of Government claims thus fixed was very high. For several years there was widespread default in payment, and lands, the revenue of which had fallen into arrears, were immediately sold by auction. Sale laws were very stringent. In twenty-two years after the permanent settlement, one-third or half of the landed property in Bengal is recorded to have been transferred by public sale. Gradually, however, prices rose and the burden of the assessment became lighter.

OTHER SYSTEMS. As several more provinces came under British control, their assessments were gradually reduced to order. The varying circumstances of different tracts and areas were taken into account in introducing at first a tentative system and in allowing it to be crystallized in course of time. Different systems were thus evolved in Bengal, Madras, Bombay, the Punjab, Agra and other provinces of India according to the historical and customary practice obtaining in each area.

2. The Existing Systems of Land Tenure

KINDS OF SETTLEMENT. *Zemindari.* Land revenue settlements in India are usually differentiated in two ways. The status of the person from whom the revenue is actually demanded forms one basis of division. When the revenue is 'assessed on an individual or a community owning an estate and occupying a position identical with or analogous to that of a landlord, the assessment is known as zemindari'. The individual or the community occupies the position of a middleman who does not cultivate the land himself but rents it out to farmers and tenants. The income from the land, in which the state claims a share, is the product of the labour of agriculturists and cultivators. The Government, however, does not hold

them responsible for the payment of its dues. The zemindar who owns the estate is held responsible. He therefore collects money from the tenants and out of it pays the Government revenue. There is no direct contact between the authorities of Government and the cultivators of the land.

Ryotwari When revenue is assessed upon individuals who are the actual owners, occupants and cultivators of smaller holdings, the assessment is known as ryotwari. Here there is no intermediary like the zemindar between the Government and the farmers who are themselves the proprietors of the land. Revenue is collected by the officials directly from the tillers of the soil in a large majority of instances, though even in this system there are a few landlords whose land is cultivated by tenants.

Permanent Another basis of division of land revenue settlements refers to the time for which the settlement is fixed. In a province like Bengal the amount of the share demanded by the Government is fixed for ever. The contracts made in 1793 between the Government and the landlords permanently fixed the sum to be paid by the landlord. There is therefore no question of enhancing the rate or the amount of the Government tax at any future date. Such a system is known popularly as the system of permanent settlement.

Temporary Where the amount of the state demand is not fixed in perpetuity but only for a definite period, sometimes a year or ten years or twenty years or thirty years, at the end of which a revision has to take place, the settlements are known as temporary settlements. In such cases the share taken by the state may be increased or decreased at the end of the stipulated number of years.

It must be remembered that the two divisions are not mutually exclusive. A zemindari settlement might be permanent or temporary. A ryotwari settlement could also be permanent or temporary. Permanence is not an invariable attribute of the zemindari settlement nor would it be correct to suppose that all ryotwari settlements must be temporary. The zemindari in Bengal is permanent; that in Agra and the Punjab and the Cen-

tral Provinces is not so. There is no instance in India of a ryotwari settlement which is permanent.

MADRAS The system in Bengal has been already described. The system prevailing in a large part of Madras is ryotwari. In the beginning, attempts were made in Madras to introduce permanently settled zemindari estates as they existed in Bengal, but they met with failure except in a few tracts. After considerable discussion, therefore, Sir Thomas Munro introduced the ryotwari system. The cultivating proprietor is in this system at liberty to relinquish his holding.

BOMBAY Most of the territory in the Presidency of Bombay was acquired after the downfall of the Peshwas, in whose time the practice of farming out revenues was in vogue. The British Government abolished the system of farming, but its earlier attempts at a regular settlement did not succeed. A new system was tried in 1835. Soils were divided into nine classes based primarily upon their depth and quality of texture, and fields were assigned to these classes. An assessment rate was fixed for each class after careful investigation into the average yield of its soil, allowing for the uncertainty of rain and other circumstances on which crops and prices depended. The rates were then applied to determine the amount of land revenue due from a particular field. The system was empirical but showed extremely encouraging results. It was soon extended to the whole Presidency, and to Sind, after it was acquired and annexed to the Bombay Presidency.

AGRA The settlement in Benares was declared to be permanent in 1795. The Directors, however, refused to sanction a similar measure for the province of Agra. The first regular settlement in this part was completed between the years 1833 and 1849. It was concluded, wherever possible, with village proprietors under a zemindari system with joint responsibility. Hereditary tenants or those who had resided in the same village for twelve years were given rights of occupancy. The assessments were fixed at sixty-six per cent of the rental assets. They were later reduced to fifty per cent by the

Saharanpur Rules of 1855. The soils were classified and standard rates of rent were fixed for each class

THE PUNJAB In Oudh, the talukdars were given full proprietary rights. They contracted to pay a fixed sum of revenue for definite tracts of land. In the Punjab, as in the North-Western Provinces, there were bodies of villagers who claimed descent from a common ancestor who had either founded the village or received a grant of it from some ruling monarch. The system of village or mahalwari settlement was therefore adopted in the Punjab. Its term was fixed at thirty years.

CENTRAL PROVINCES In the Central Provinces, the zemindari system was introduced in a modified form. Revenues were farmed out to individuals known as patels or malguzars in the time of the Marathas. The villagers, however, were not connected by ties of blood like the villagers in the Punjab or Agra. The revenue farmers soon acquired a quasi-proprietary position. Their claims were allowed by the British rulers and they were held responsible for the payment of land revenue. This settlement is known as the malguzari settlement. It is liable to periodical revision.

REVENUE ASSESSED ON RENT OR NET INCOME In no part of India does land revenue now represent a portion of the gross produce. In the United Provinces, the Punjab and the Central Provinces, the Government demand is theoretically based on an economic rent. It is assessed on the amount of rent paid by the tenants to the landlords. In the case of ryotwari provinces like Madras and Bombay, the assessment is based on the net produce. The figure of the net income is arrived at after deducting the expenses of cultivation from the gross income. Actual calculations may be made to find out the expenses and the net income in particular fields as is done in Madras; or, as is done in Bombay, an empirical rate may be arrived at for a certain area by taking into consideration the classification of the soil and the general economic conditions of the tract. This rate is then expressed in a sliding scale and applied to different fields in accordance with their fertility.

3. Controversy about the Permanent Settlement

R C. DUTT AND LORD CURZON. One of the most disputed questions in the Indian land revenue administration is the desirability or otherwise of extending the system of permanent settlement to the whole of India. Mr R C Dutt, the eminent Indian civilian and scholar, was an ardent advocate of such an extension. He wrote incessantly on the subject, and Lord Curzon's Government thought it advisable to review his criticism of the Government policy and to give a reply. Their conclusions were summarized in a Resolution which was issued by the Government of India in 1902

ADVANTAGES OF THE PERMANENT SETTLEMENT The arguments put forward in support of permanent settlement were

(i) That it would be a protection against the ravages of famines

(ii) That the expenses and harassment of the assessment operations would be avoided

(iii) That there would be no temptation to abandon cultivation on the approach of a revision

(iv) That it would result in an accumulation of capital which could be utilized for investment in industries

(v) That people could lead a fuller and more contented life

(vi) That the immediate loss of revenue would be more than compensated by the indirect but certain benefit accruing from the system in the future.

Fixity of the state demand would remove any uncertainty in the mind of the cultivator about the amount that he would have to part with. There would be no lurking fear that the investment of his capital and labour in the improvement of the land might be penalized by the Government claiming an increased share just when the improvements fructified. Besides, the creation of an aristocratic and leisured class in the community was expected to produce some beneficial results in promoting the arts, sciences, and learning, and thus

to raise the cultural level of the people. In short, it was contended that from the economic and also from the social point of view, permanent settlement was the most beneficial arrangement in land revenue administration.

DISADVANTAGES It was stated on the other hand in opposition to these points.

(i) That the evidence of facts did not justify the description of permanent settlement as a protection against famines. Famines had not been less frequent nor less harmful in permanently settled areas.

(ii) That it was part of the deliberate policy of the Government to simplify and cheapen the proceedings in connexion with settlements.

(iii) That the policy of long-term settlements was being encouraged.

(iv) That over-assessment was not proved to be a cause of the widespread poverty and indebtedness of the agriculturist in India.

(v) That progressive moderation in assessment was the keynote of the Government policy.

(vi) The improvements introduced by the cultivators or the landlords were exempted from assessment even in temporarily settled areas.

(vii) That the Government had to interfere to safeguard the tenants from the tyranny of ruthless landlords.

(viii) That permanent settlements deprived the revenue system of any elasticity which could facilitate an adjustment to the variations of seasons and the circumstances of the people.

PERMANENCE NOT DESIRABLE That settlement of revenue from land in perpetuity could not be a theoretically sound proposition will be readily admitted by any student of economics. It is unjust, and even ridiculous, to commit all future generations to a course of action which appears most suitable to a particular time. It is extremely disadvantageous to prevent the state from having a proportionate share in the increasing income of the community. Such an embargo makes it financially impossible for the state to undertake any big

scheme of public welfare made possible by modern conditions. From the point of view of economic science also, it is unfair to allow the unearned increment from land to be appropriated by a few private individuals. All economic rent ought to belong to the community, and the State as the representative of the community is alone entitled to receive it. It is not unlikely that the popular Ministries in autonomous provinces may take steps to modify or liquidate the system of permanent zemindari settlement¹. It may be added that the introduction of permanent settlement in only one province of India created inequality and subjected the other provinces to heavier taxation.

LAND REVENUE IS A PROVINCIAL SUBJECT After the Montford Reforms, land revenue became an entirely provincial subject and was one of the main sources of income for the Provincial Governments. It was, however, not a Transferred subject. The Government of India retained a larger control over its administration, particularly over the question of modifications in the methods of settlements. Some of the provinces appointed committees to investigate into and make recommendations for reforming the present system. Such a committee was appointed, for instance, in the Bombay Presidency. In fact, a good deal of interest has been aroused in the subject, and discussion has centred round the question of finding the most suitable method of improving existing conditions. The peasant agitation in the Baidoli Taluka of the Bombay Presidency in 1927-8 helped to focus attention on land revenue reform, particularly in the matter of revision of settlements.

LAND REVENUE AND INCOME-TAX The Indian Taxation Committee considered the question from various points of view. Several thinkers have pointed out the iniquity of the incidence of land taxation as compared with that of other taxes. It is suggested that a more proper and just course would be to approximate the

¹ The Floud Commission was actually appointed by the Bengal Ministry and it has recommended the abolition of the Permanent Settlement in Bengal.

system of land revenue collection to that of collecting the income-tax. In a province with a preponderance of small holdings, such a reform may mean enormous loss of revenue. The question, however, bristles with difficulties and it is not possible to discuss it in all its bearings in the present work.

4. Land Revenue : Rent or Tax ?

DIVERGENT VIEWS. Reference may finally be made to a controversy which has been going on for a long time but which has now ceased to have any great practical importance. Dispute has centred round the question whether land revenue is a tax or a rent. If it is a rent, the proprietorship of the state over all the land in the country is by implication admitted. Those who do not support the doctrine of state ownership look upon land revenue as a compulsory payment made to the state just as all other taxes are compulsory payments.

Indian public opinion has generally taken this view. The report of the Taxation Committee has quoted a large amount of evidence in favour of the contention that land revenue is a tax and not a rent. Baden-Powell has been very guarded in his statement of the position of the British Government with reference to the Indian land system. The zemindars have been expressly acknowledged as the proprietors in large areas. Even in ryotwari tracts where the cultivator-owners are supposed to be tenants of the state, they enjoy all the privileges of ownership including the right of sale, mortgage and transfer, subject to their payment of the Government dues. As long as these are paid, the 'tenants' cannot be dispossessed of their estate by the theoretical owners. No very great significance therefore attaches to the practical aspect of the question.

Difference of opinion exists on the question whether land revenue is a direct tax or an indirect tax. The fact that it works partly as a tax on income and partly as a tax on things makes it difficult to state exactly whether it is direct or indirect. However, theoretically

at least, the bias is in favour of describing it as a direct tax

5. Land Revenue Administration

REVENUE OFFICERS— In the province of Bombay it is the primary duty of village officials like the Patel or Patil and the Talati to make collections of land revenue from owners of land in the village and to keep account of the same. Their work is supervised and checked by Circle Inspectors, Mamlatdars and Assistant or Deputy Collectors. As has been explained previously, the Collector of the District is mainly a revenue official and he is responsible for proper and systematic collections within the area in his charge. Above him is the Commissioner of the Division and at the head of the department is the Minister for Land Revenue.

SURVEY, SETTLEMENT AND RECORDS There are separate departments and offices for carrying out survey and settlement operations. Records of rights are accurately maintained in every village, giving the names of all persons who are holders, occupants, owners or mortgagees of land, the nature and extent of the respective interest of such persons, and the rent or revenue payable by or to any such persons. Settlement Commissioners and Superintendents and Inspectors of Land Records are special officers who supervise the working of this aspect of land revenue administration.

THE PUBLIC SERVICES

1. Early History and Organization

SERVANTS EMPLOYED BY THE EAST INDIA COMPANY. The East India Company had to appoint a large staff of merchants, factors and writers to carry on its commercial business. When, at a later stage, it began to take an active part in Indian politics, its officers were called upon to play the role of administrators and generals. With the completion of the conquest and the growth of a sense of stability in its new status, the purely military bias of the Company's outlook gradually began to lessen. It became more conscious of the obligations of a civilized Government in times of peace. The number of officers in its service began to increase, and the nature of their duties became much more diversified.

DIFFICULTY OF RECRUITMENT. The recruitment of the proper type of men for service in a state is always a difficult problem. It becomes more so when they have to be sent out to rule over a conquered country. The civil and military services in India are not only required to perform all those functions which similar services perform in independent countries. In addition, it is their responsibility to maintain the supremacy of the conqueror over the vast territorial area which has come into his possession as a consequence of wars, annexations and treaties.

THE PRINCIPLES OF NOMINATION AND EXAMINATION. Till the middle of the nineteenth century, the only passport to the superior Indian Services was nomination by the Court of Directors of the East India Company. It was a very unsatisfactory system, based as it exclusively was on patronage and corruption, and not on a test of merit. The task of keeping an empire demanded the devoted labour of men of real ability and character. It was not easy to discover such persons by the method

of undiluted nepotism After 1853, and more particularly after the abolition of the East India Company, the Indian Civil Service was thrown open for general competition An examination was held for that purpose in England and even Indians were permitted to compete for appointments.

INDIANS AND THE I.C.S The privilege, however, was quite theoretical and academic so far as the people of India were concerned. Its practical utility to them was negligible In the nature of things, the number of Indian students who could avail themselves of the opportunity thus offered was extremely small The cost of staying in a distant foreign country with a very high standard of living was prohibitive to the citizens of a poor country; its environment and society were absolutely unfamiliar, and the chances of success were exceedingly uncertain A pilgrimage to England for appearing at the I.C.S examination was too great a risk or too great a luxury for clever Indian students of ordinary means Only one Indian had successfully come out of the ordeal till the year 1870

THREE GRADES OF THE INDIAN SERVICES. *Imperial.* Since 1887, the civil services in India have been divided into three grades, namely imperial, provincial, and subordinate Every important department of the Provincial Government has been organized on the basis of this threefold gradation. Officers of the imperial service stand at the apex For a long time, recruitment to this grade was confined only to Europeans, though latterly Indians have been admitted into its ranks in increasing numbers Men of intellectual calibre and equipment of a high order are supposed to be taken into this service. It supplies the heads of the various branches of administration and may be said to embody the directive energy of the governmental machine. The scales of salary, allowances and promotions, and other conditions of service are extremely attractive

Provincial and Subordinate Next in importance stands the provincial service Some of the responsible posts in the administration are allowed to be held by

men selected from this grade. They enjoy a certain amount of initiative and latitude, though they have to take their general orders from superiors in the imperial service. Their qualifications and emoluments are lower than those of the latter. At the bottom of the bureaucratic ladder stands the subordinate service. It consists of persons who have only to carry out the orders of their superiors and whose functions are purely mechanical. The scale of salary, etc. is low and the qualifications required are very ordinary. The personnel of both these lower grades of service is chiefly Indian.

THE STRONG POSITION OF THE ICS The ICS has always been regarded as the senior of all the Indian Services and as one upon which the responsibility for good government ultimately rests. Posts of general superintendence and control, on the executive, judicial and political sides of the administration, are filled by I.C.S. officers. In fact, many such important posts have been reserved for members of this service. As the Montford Report said, the Indian Civil Service is much more of a Government corporation than purely a civil service in the English sense. It is entitled not only to administer but also to advise. Its officers are habituated to the exercise of authority. In emergencies, they have to depend upon their own judgement. In fact, they are saddled with the heavy responsibility of preserving and managing their Sovereign's domains in a distant land. As the men on the spot who have to shoulder that burden directly, a good deal of discretion and authority are left to them.

2. The Services under Self-government

POLITICAL AWAKENING OF INDIA After the political awakening of India and the growth of self-consciousness among its people, it was asserted as a self-evident proposition that all the Indian Services, high and low, ought to be manned and controlled by Indians, as they are all paid out of the Indian revenues. No proof was necessary for the axiomatic truth that those who are supposed to serve a country must be entirely under the command,

guidance and authority of its people. The ICS did not conform to this simple and natural position. Critics often said that its designation was a complete misnomer, because it was neither Indian nor civil nor service. It was, in fact, a powerful hierarchy in which were concentrated the agents of the British masters of India. The same was true of the other superior or imperial services.

INTRODUCTION OF DEMOCRACY With the announcement of Parliament's decision to grant the right of self-government to the Indian people, the controversy about the status of the services became more acute and began to wear an altogether different aspect. The matter was discussed at length in the Montford Report and later on in the Report of the Joint Parliamentary Committee on which the Act of 1935 was based. The transition from a purely bureaucratic to a partly democratic stage in India's political development was bound to produce its own results. They followed as a natural corollary of certain fundamental assumptions.

THE CIVIL SERVANT AS A SPECIALIST. The civil services in a system of responsible government cannot claim to be the ultimate seat of all governmental authority. They have to bow to the wishes of the legislature and carry out its mandates with scrupulous loyalty. The enunciation of ideals and the shaping of policy are left entirely to Ministers who are the recognized leaders of public opinion. The bureaucracy has to act in the capacity of skilled consultants, technical advisers, or inspecting and reporting officers. Their opinions, based as they are on long experience, are entitled to great respect. But civil servants are not in a position to say the final word.

ANXIETY FELT BY THE SERVICES The new policy introduced by the Act of 1919 and taken a little further by the Act of 1935 created a feeling of profound distrust and anxiety in the minds of Indian Civil Servants. It was, of course, never suggested that they should be discharged from employment or that their interests should be adversely affected in any way. On the contrary, the

indispensable and precious nature of the services they render was frequently emphasized. These officers, however, realized that their former bureaucratic independence and supremacy were doomed under the new order. They would have to be answerable for their actions to the Indian legislatures in proportion to the grant of political power to the Indian people, and this prospect of subordination was extremely unwelcome to many. Many even became apprehensive as to the stability of their position.

TRANSFER OF POWER TO BE LIMITED. However, it must be remembered that Parliament does not propose to confer upon India the full status of a Dominion at once. The process is to be gradual, and the advance is to be made in instalments. The transfer of political power to the hands of Indians contemplated by the Act of 1935 is only partial. It is necessarily accompanied by numerous limitations and restraints. A fully self-governing India cannot at the same time be governed by an agency of foreign masters. But Parliament is not prepared to abandon all its authority in respect of that portion of the Indian administrative structure on which the maintenance of its own active control depends.

THE UNDERLYING PRINCIPLE OF THE ARRANGEMENT. The basic philosophy of the whole arrangement is thus embodied in a combination of two inherently incompatible principles of government. The absolute rule of an irresponsible bureaucracy is to be discontinued, at least in what are intended to be autonomous provinces. Yet some of the most vital services of the state are to be kept beyond the jurisdiction of popular Ministers and legislatures. This must lead to the formation of that incongruous product which is known as responsibility with reservations or self-government with safeguards. The essential contradiction of such a hybrid concept is too pronounced to be ignored by a student of political science. It threatens to caricature democracy.

PRIVILEGES OF THE SERVICES APPOINTED BY THE SECRETARY OF STATE. A part of the Act of 1935—Part X—containing no less than 46 sections is devoted to elaborat-

ing the privileges that are guaranteed to the services under the new constitution. The Secretary of State retains the power of making appointments to the I.C.S., I.M.S. (Civil) and the Indian Police Service. He can also make appointments to any other service if he thinks it necessary to do so. Rules prescribing the scales of pay, leave, pensions, medical attendance, etc. have to be made by him. The promotion of persons so appointed, or any order suspending them from office, or punishing or formally censuring them, or adversely affecting their emoluments in respect of pension, is to be made by the Governor-General or the Governor in his individual judgement. A person who feels aggrieved by an order affecting his conditions of service may also complain to those authorities and seek redress. The appeal may be taken further to the Secretary of State. The salary and allowances of persons serving in this grade are non-votable and are charged on the revenues of the Federation or the province as the case may be.

THE LEE CONCESSIONS The liberal concessions granted to the European members of the superior services in pursuance of the recommendations of the Lee Commission are to be continued. They include substantial overseas allowances to officials of non-Asiatic domicile, four return passages to officers and their wives and a single passage for each child, from India to England, during the period of service, medical attendance by European doctors, increased pensions to those who have occupied important posts such as an Executive Councillorship or a Governorship, and so on.

OTHER CIVIL SERVICES Appointments to the other civil services are made by the authorities in India and their conditions of service are also prescribed by them. In the case of the Federation, it is the Governor-General or such person as he may direct; in the case of the province, it is the Governor or such person as he may direct. No servant can be dismissed from office by an authority subordinate to that by which he was appointed. The existing rights of persons who were already in service before the commencement of the Act of 1935 are not to

be adversely affected except by a competent authority. They will also have the right of appeal against orders which punish or censure them. Subject to all these restrictions, the appropriate legislatures in India will have power to regulate, by Acts, conditions of the civil services within their spheres.

Control over the defence services vests entirely in His Majesty-in-Council and the Secretary of State.

NOMINATIONS TO THE I C S The Lee Commission had recommended that Indianization should proceed in such a way that by 1939 the Indian Civil Service should be composed of fifty per cent Indians and fifty per cent Europeans. The fact that I C S. examinations began to be held in India from 1921 did not mean that Indians were precluded from competing at the examination held in London. In fact, a fairly large number of Indians entered the service by the London door. Recently it began to appear that the number of European recruits tended to fall below the fifty-fifty ratio, and it was therefore decided that the Secretary of State should appoint to the I C S a certain number of graduates of British Universities by nomination instead of by competitive examination. Further, even though the right of Indian students to appear at the London test was not taken away, it was severely curtailed by a new rule that all candidates who desired to appear at that test must have previously secured an Honours degree of a British University. Indian opinion is opposed to these changes.

PUBLIC SERVICE COMMISSIONS The Act provides that there shall be a Public Service Commission for the Federation and a similar commission for each province. Two or more provinces may agree to have a common body, as has been done by Bombay and Sind. The chairmen and members of these commissions are to be appointed by the Governor-General or the Governor as the case may be, in his discretion, and he has also to determine the number of members, their tenure of office and conditions of service. At least one-half of the members of a commission must be persons who have held office for at least ten years under the Crown in India.

The expenses of the commissions including salaries, allowances and pensions to their staff will be non-votable by the legislatures

DUTIES It will be the duty of the Public Service Commissions to hold examinations for appointments to the civil services. They are to be consulted, subject to certain exceptions, on matters relating to the methods of recruitment, on the principles in making promotions and transfers from one service to another, on all disciplinary matters affecting a servant, and so on. However, it is not necessary to consult the commissions about the manner in which appointments and posts are to be allocated as between the various communities.

THE POSSIBILITY OF THEIR SUCCESS The object of creating a body like the Public Service Commission is to ensure proper recruitment for the country's executive and the efficiency of its working. Public administration cannot be allowed to be demoralized by unscrupulous political interference. A reasonable amount of independence has to be guaranteed to officers in the performance of their legitimate duties. However, in the peculiar conditions of India, the Public Service Commissions may not be able to achieve these results. Their constitution is faulty. There are numerous statutory encroachments on what ought to be their exclusive jurisdiction. The general nature of their working may turn out to be highly bureaucratic and their outlook may not harmonize with the general trend of public opinion in the country. Ministers may find them to be handicaps which thwart rather than assets which strengthen the progressive working of the state machine. Even an independent commission of this type must imbibe the general atmosphere which pervades a nation. If they live in a democracy but are also impervious to its ideology and beyond its control, the existence and functioning of such bodies may not prove to be an unmixed blessing.

3. Criticism

EXCLUSION OF INDIANS Indian public opinion has approached the question of the Services with peculiar

caution To the Indian, officers of the bureaucracy like Collectors and Commissioners are the embodiments of the sovereignty of the raj Till recently, all the superior grades of the governing bureaucracy were almost entirely manned by Europeans who were foreigners to the land. The deliberate exclusion of Indians, in spite of Acts of Parliament and the Queen's Proclamation of 1858, was felt by them as derogatory to their self-respect and patriotic sentiment It was to them a constant and standing reminder of the degree of degradation to which they had been reduced by circumstances

EXTRAVAGANT SCALES OF PAY The ostracism that was imposed upon the citizens of the country was in itself sufficiently humiliating, the injury was aggravated by the extravagant scale on which remuneration was paid to the foreign servants from the revenue of a poor country The Governor-General of India stood and still stands unique and unequalled in the hierarchy of officials of the whole world in point of his salary and sumptuary allowances Even the President of the wealthiest democracy in the world, the United States of America, and the Prime Minister of the mightiest empire in history, the British empire, are paid less than he Members of the Indian Civil Service also still stand unique in comparison with their brethren in other countries. The monetary drain that results from this top-heavy agency is immense With the retiring of officials from the country at the end of a long period of service, the whole volume of administrative experience acquired by them also leaves the shores of the country.

NO SCOPE FOR INDIAN ADMINISTRATIVE TALENT But the evil is not only financial It is moral As G. K. Gokhale, the eminent Indian politician, pointed out, under the atmosphere of foreign domination, a kind of dwarfing or stunting of the Indian race has been going on The upward impulse, the healthy ambition to rise to the loftiest heights, which is cherished in an atmosphere of democratic freedom, is being dried up by continued existence in an environment of abject inferiority.

The administrative and military talents which have been the glory of the country's history in the past are bound to deteriorate and finally disappear owing to sheer disuse. This is inevitable in the absence of proper opportunities for their complete or even partial exercise.

The admiration showered upon the marvellous efficiency and machine-like systematic working of a bureaucratic government might be relished by the conqueror's instinct of self-preservation and self-exaltation. It might even find an echo in those amongst the conquered community who can be abstract and objective appreciators of organized efficiency. Yet achievement in this direction is not the only criterion of the success of a hierarchy of officials.

LORD MORLEY'S OPINION Lord Morley was led to imagine that 'our administration would be a great deal more popular if it were a trifle less efficient and a trifle more elastic. Our danger is the creation of a pure bureaucracy, competent, honourable, faithful, industrious but rather mechanical, rather lifeless, perhaps rather soulless'. No administration can be progressive or beneficent which crushes the self-reliance of a people and gives no latitude for the realization of their natural aspirations.

Fifty years ago, a responsible statesman like Lord Salisbury could ask 'Is there any man who would have the hardihood to tell me that it is within the range of possibility that a man in India should be appointed Lieutenant-Governor or Chief Commissioner or Commander-in-Chief or Viceroy without any regard whatever to his race?' It is well to avoid political hypocrisy.

There never was a country and there never will be one in which the government of foreigners is really popular. It will be the beginning of the end of our Empire when we forget this elementary fact and entrust greater executive powers in the hands of natives. Our Governors of provinces, our magistrates of Districts and their principal subordinates ought to be Englishmen under all circumstances. However, sentiments like these are out of tune with present-day imperial notions, and may be taken to have been automatically discarded.

in the promise of the grant of self-government of a responsible type. In fact, in civil administration Indians are now holding important posts, and a few have even been allowed to act as Governors for short periods

XXXIV

EDUCATION

EARLY HISTORY In the earlier days of the Company's rule no serious attention could be paid to the education of the subjects on account of the uncertain and restless times. Their efforts were confined to the establishment of a Mohammedan or Sanskrit college of the old type. Warren Hastings and Lord Cornwallis took steps in this direction. In 1782 Hastings founded the first college in Bengal to encourage the study of Arabic and Persian. A similar college was established in Benares in 1791 for the cultivation of Hindu laws, literature, and religion.

New influences were, however, soon at work. A knowledge of English became a means of livelihood for Indians under the rule of the English-speaking people. A demand arose for facilities in English instruction in Presidency towns. A struggle was going on between the old and the new schools. The Orientalists wished to maintain the study of oriental classics in accordance with methods indigenous to the country. The Anglicists urged that all instruction should be given through the medium of the English language and should be in accordance with modern ideas.

MACAULAY'S MINUTE Lord Macaulay was the famous supporter of the Anglicist school. He recorded his opinion in a separate Minute which vigorously expressed his contempt for oriental learning. His influence was irresistible. Lord William Bentinck decided that the promotion of European lore must be a main object of British rule. A Resolution of the Governor-General in 1834 plainly declared for English as against oriental education. Lord Auckland's Minute in 1839 finally closed the controversy. Since that time, the spread of western knowledge came to be regarded as one of the duties of the state and the English language was adopted

as the medium of instruction in high schools, colleges and universities.

DISPATCH OF 1854. In 1854 the education of the whole people of India was accepted as a duty of the state. The Board of Directors issued their famous dispatch which is described as the 'Charter of Education in India'. A number of changes were proposed: (i) The constitution of a separate department for the administration of education, (ii) the institution of universities in the Presidency towns, (iii) the establishment of institutions for training all classes of people; (iv) the maintenance of the existing Government Colleges and High Schools and a further increase of their number; (v) the establishment of new Middle Schools, (vi) increased attention to schools for elementary education, and (vii) the introduction of a system of grants-in-aid. The mother tongue was to be the medium of instruction in lower branches and English in the higher. There was to be complete religious toleration. Female education was to be cordially supported and encouraged by the Government. Sir Charles Wood was mainly responsible for sending this dispatch.

DISPATCH OF 1859. Another dispatch was published in 1859. It confirmed the principles of the earlier dispatch, but pointed out that elementary education was not being properly promoted. The system of grants-in-aid was not thought desirable or expedient with reference to primary education, and it was recommended that the Government should provide for such education more directly through the instrumentality of its officers. A special cess upon land for primary education was also recommended for the consideration of the Government.

UNIVERSITIES. Universities were established in Bombay, Madras and Calcutta in 1857, in the Punjab in 1882 and in Allahabad in 1887. They were all merely examining bodies. The growth of schools and colleges proceeded rapidly, and by 1882 there were more than two and a quarter million pupils under instruction in public bodies. The Commission of 1882 again made

useful recommendations and advised increased reliance upon private effort. According to the principles of local self-government, municipalities and Local Boards were given considerable liberty in the management of primary schools. In 1898, a review of the situation was made and a searching inquiry followed. A conference of educationists was convened in Simla in 1901. A Commission to investigate and report on the working of universities was appointed in 1902. The Indian Universities Act was passed in 1904 by Lord Curzon's government to give effect to the recommendations of the Commission.

THE ACT OF 1904 The Act specifically recognized the wider functions of the universities including instruction of students and appointment of professors and lecturers and equipment of laboratories and museums for that purpose. Territorial limits were assigned to each university. Conditions for the affiliation of colleges were prescribed. A systematic inspection of colleges by the university was established. The term of a Senator's office was prescribed to be five years, instead of for life as before. The number of Senators and Syndics was limited, and a majority of nominated members was created. New regulations for the five universities were promulgated in 1905-6. They were all affiliating universities and any number of colleges could be affiliated to them. They soon ceased to be living organisms, since their constituent parts—the different colleges scattered over the province—contributed nothing to the common life of the university.

A Resolution of the Government of India in 1913 recognized the necessity of restricting the area over which affiliating universities had control. The institution of teaching and residential universities was recommended. The strength of communal feeling and the growth of local and provincial patriotism helped in the development of the new policy. Patna, Lucknow, Rangoon, Dacca and Delhi became university centres. So did Benares and Aligarh. These are not only examining

but teaching bodies and their territorial jurisdiction is strictly limited

THE CALCUTTA UNIVERSITY COMMISSION The Calcutta University Commission, presided over by Sir Michael Sadler, made their voluminous report in 1919. They recommended a complete reorganization of the system of higher education in Bengal. The institution of new types of bodies known as Intermediate Colleges was suggested. To them was to be transferred secondary and intermediate education. Most of the recommendations of the Commission were, however, left unheeded when, after the Montford Reforms, the Calcutta University was transferred to the Government of Bengal, and action was taken by the latter to modify the affairs of the university in 1921.

AFTER THE MONTFORD REFORMS After the Montford Reforms, education became a Transferred subject, administered by Ministers responsible to the legislature. Great hopes were entertained about the acceleration of the progress of education under the new conditions. They were not fulfilled for various reasons, chiefly owing to lack of funds. Endeavours were made to combat illiteracy by providing for free and compulsory education in primary schools. The Bombay Legislative Council took the lead in this matter by passing the Compulsory Education Act, and other provinces passed similar measures. The general control of the university system was placed within the province of the local Governments. Many of them passed legislation to modify the constitution of the older institutions or to create new ones altogether. The Allahabad University was reorganized. The Madras University was also remodelled. New universities were established at Nagpur and Agra and agitation for another in Rajputana is being carried on. There are now 15 universities in British India, and 3 in Indian States.

BOMBAY UNIVERSITY REFORM The Bombay Government was not left entirely unaffected. A special committee was appointed to suggest measures of reform. Its Report made various recommendations about the

grouping together of colleges in the city of Bombay so as to develop a university area. It recommended an alteration of the constitution of the University in order to make it more democratic and elective. Separate universities for Poona in the first instance and for Gujarat, Karnatak and Sind in course of time were also recommended. The question of the determination of the medium of instruction was left to the universities themselves. Action upon the report was then taken by the legislature¹

ITS PRESENT CONSTITUTION The Bombay University Act passed in 1928 considerably altered the Constitution of the University. The Senate, which till then contained an overwhelmingly large nominated majority, has now been given a predominantly elective character. In addition to the Chancellor, the Vice-Chancellor, the Registrar and some Government officials who are *ex officio* members, the Senate consists of members elected by different constituencies. Principals of colleges and university professors elect thirteen members, college professors (including principals) elect twenty, headmasters of schools elect five. Public associations or bodies in British India like municipalities, the Indian Merchants' Chamber, the Millowners' Association, District Local Boards, etc., send another fifteen. Registered graduates of the University elect twenty-five. Faculties constituted by the Senate elect ten. Lastly, the Bombay Legislative Assembly sends five representatives, one of whom is the member for the University. As Sind is no longer a part of Bombay, its legislature is at present without a representative on the Senate. The total number of elected members thus reaches ninety-three. The number of those nominated by the Chancellor is limited to forty.

The executive government of the University is vested as before in the Syndicate, which now consists of the Vice-Chancellor, the Rector if any, the Director of Public Instruction, seven persons elected by the Acade-

¹The Jayakar Committee's Report published in 1943 made detailed recommendations about a university for Poona.

mic Council from itself and nine persons elected by the Senate from those of its members who are not principals, professors or headmasters. The term of the Syndicate is three years and of the Senate five years.

A new body called the Academic Council has been created to regulate purely educational matters like teaching and examinations, courses of study, scholarships and prizes, etc. It consists of the Vice-Chancellor, Deans of Faculties, representatives of university professors, headmasters and Boards of Studies, in addition to five representatives of the Senate.

AFTER PROVINCIAL AUTONOMY. After the advent of provincial autonomy, educational activity received a great impetus in all the provinces. Many committees were appointed to consider various problems, and some action is being taken on their reports. The provision of adequate arrangements for physical instruction, establishment of secondary education boards, a complete overhauling of courses of studies and textbooks, reorganization of the grant-in-aid scheme, introduction of free and compulsory primary education, planning a vigorous mass drive against illiteracy, closing of Government high schools and colleges when their work can be easily taken over by private institutions, encouraging and actively helping schemes of adult education, making the mother-tongue the medium of instruction, are matters which are seriously engaging the attention of Ministers. The Wardha scheme has suggested radical alterations in the ideals and methods of education, and experiments based on those suggestions are being carried out in many provinces.

APPENDIX

THE CRIPPS MISSION

After the outbreak of the present world war, political opinion in India was considerably agitated. The Allies had declared that they were fighting for freedom and democracy and yet, paradoxically enough, India, which was declared belligerent by the Viceroy and which was called upon to fight on the side of the Allies, did not enjoy the rights of full self-government and freedom. Nor were the war aims of the Allies with reference to subject peoples satisfactorily clarified even when Britain was requested to clarify them. The Indian National Congress therefore decided not to participate any further in the work of the provincial governments and the Congress Ministries resigned by the end of 1939. Thereafter followed a kind of political stalemate. Efforts were made to end this undesirable state and following the precedent of Mr Montagu's visit, the British Cabinet decided to send to India one of its own members with definite proposals for the constitutional development of India. Accordingly, Sir Stafford Cripps flew to India in March 1942 and discussed the proposals that he had brought from the British Cabinet with leaders of Indian public opinion.

That part of the proposals pertaining to immediate changes in the composition and powers of the Indian Government, during the currency of the war, was considered to be inadequate and unsatisfactory by Indian leaders. Their criticism was that the proposals did not visualize the immediate establishment of a responsible national government at the Centre with a real power to organize the country's defence. The Cripps offer was finally rejected for different reasons by all Indian political parties, including the Indian National Congress and the Moslem League.

The following is the text of the Cripps proposals :

Draft Declaration

‘His Majesty’s Government, having considered the anxieties expressed in this country and in India as to the fulfilment of the promises made in regard to the future of India, have decided to lay down in precise and clear terms the steps which they propose shall be taken for the earliest possible realization of self-government in India. The object is the creation of a new Indian Union which shall constitute a Dominion, associated with the United Kingdom and the other Dominions by a common allegiance to the Crown, but equal to them in every respect, in no way subordinate in any aspect of its domestic or external affairs.

His Majesty’s Government therefore make the following declaration . . .

I Immediately upon the cessation of hostilities, steps shall be taken to set up in India, in the manner described hereafter, an elected body charged with the task of framing a new Constitution for India

II Provision shall be made, as set out below, for the participation of the Indian States in the constitution-making body

III. His Majesty’s Government undertake to accept and implement forthwith the Constitution so framed subject only to :

(1) the right of any Province of British India that is not prepared to accept the new Constitution to retain its present constitutional position, provision being made for its subsequent accession if it so decides

With such non-acceding Provinces, should they so desire, His Majesty’s Government will be prepared to agree upon a new Constitution, giving them the same full status as the Indian Union, and arrived at by a procedure analogous to that here laid down.

(ii) the signing of a Treaty which shall be negotiated between His Majesty’s Government and the constitution-making body. This Treaty will cover all necessary matters arising out of the complete transfer of responsibility from British to Indian hands ; it will make provision, in

accordance with the undertakings given by His Majesty's Government, for the protection of racial and religious minorities; but will not impose any restriction on the power of the Indian Union to decide in the future its relationship to the other Member States of the British Commonwealth

Whether or not an Indian State elects to adhere to the Constitution, it will be necessary to negotiate a revision of its Treaty arrangements, so far as this may be required in the new situation

IV. The constitution-making body shall be composed as follows, unless the leaders of Indian opinion in the principal communities agree upon some other form before the end of hostilities

Immediately upon the result being known of the provincial elections which will be necessary at the end of hostilities, the entire membership of the Lower Houses of the Provincial Legislatures shall, as a single electoral college, proceed to the election of the constitution-making body by the system of proportional representation. This new body shall be in number about one-tenth of the number of the electorate college

Indian States shall be invited to appoint representatives in the same proportion to their total population as in the case of the representatives of British India as a whole, and with the same powers as the British Indian members

V During the critical period which now faces India and until the new Constitution can be framed His Majesty's Government must inevitably bear the responsibility for and retain control and direction of the defence of India as part of their world war effort, but the task of organizing to the full the military, moral and material resources of India must be the responsibility of the Government of India with the co-operation of the peoples of India. His Majesty's Government desire and invite the immediate and effective participation of the leaders of the principal sections of the Indian people in the counsels of their country, of the Commonwealth and of the United Nations. Thus they will be enabled to give their

active and constructive help in the discharge of a task which is vital and essential for the future freedom of India'

After these proposals were rejected, in accordance with the policy pursued by the Viceroy with the approval of His Majesty's Government of Indianizing his Executive Council, that Council was expanded for a second time in July 1942, the first expansion having taken place in October 1941. The membership was enlarged from 12 to 15. Of these, 11 are non-official Indians, 1 non-official European and 3 European officials including the Commander-in-Chief whose portfolio is now designated as War Portfolio. A new portfolio has been created for Defence which includes all questions concerning defence involving co-ordination of policy and action between the civil departments and the work of the War Member, war legislation, demobilization, manpower, National Defence Council, cantonment local self-government, land acquisition, prisoners of war, etc. The old portfolio of Communications has been split up into the portfolios of War Transport, and Posts and Air (civil aviation). The former includes the Railway Board, ports, railway priorities, petrol rationing and the development of producer-gas; the latter includes posts and telegraphs, civil aviation, motor vehicles legislation and the Central Road Fund. More recently, to deal with the problem of post-war reconstruction a new portfolio has been created; the Member for Development and Planning will take up office in August 1944.

Indian representatives have also been nominated on the War Cabinet and on the Pacific War Council in London.

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